International Contracts and Arbitration

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1- A contract – in general - is an agreement between two or more persons which creates an obligation to do or not to do a particular thing. A promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty[1].

2- To draft an international contract the drafter have to note many points about the parties, the circumstances ….. etc.

3- The breach of international contracts may be settled by litigation as a traditional method or by arbitration and mediation.

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(1) العقد هو اتفاق بين طرفين أو أكثر ينشيء التزام بعمل أو بامتناع عن عمل شيء معين. فهو وعد أو مجموعة وعود يترتب على مخالفتها وجوب التعويض أو التنفيذ العينى. وباختصار فأن العقد هو اتفاق ملزم يمكن تنفيذه قانونا.
انظر:

Dr. M.I. AlAmedin: Drafting of international contracts, 1999, P. 23.
The term contract is used to denote three different meanings:

1. The series of acts of the parties expressing their assent.
2. A physical document executed by the parties as evidence of their having performed the necessary acts expressing their intentions.
3. The legal relations resulting from the acts of the parties, including the relation of right in one party and duty in the other

يستخدم اصطلاح العقد للدلالة على ثلاثة معانى مختلفة:
1 - سلسلة من الأفعال يعبر بها الأطراف عن رضائهم.
2 - وثيقة مادية يصدرها الأطراف كدليل على القيام بالأعمال اللازمة للتعبير عن نواياهم.
3 - العلاقات القانونية التى تنتج عن أفعال الأطراف، ويشمل ذلك ترتيب حق لطرف وواجب على الطرف الآخر

Here we will tray to study these points in the next chapters:

Chapter One: Formation of international contracts.

Chapter Two: Drafting of international contract parts.

Chapter Three: Termination of international contracts .

Chapter Four: Settlement of disputes.

Chapter one
Formation of International Contracts
إبرام العقـود الدولية

A contract consists of an offer on the part of one side, and an acceptance on the part of the other[1].

Whereas the agreement is made when an offer is accepted by the offree [2], acceptance must be communicated to the offeror[3].

Section One
Requirements For Formation Of Contracts
شروط إبرام العقود

For the formation of a contract, law requires:

1. A legal capacity.
2. A manifestation of assent by the parties who form the contract.

The manifestation of mutual assent may be made

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(1) يتمثل العفد فى إيجاب من أحد الأطراف، وقبول من جانب الطرف الآخر.

(2) ويجب أن نلاحظ أن العقد ينشأ عندما يقبل العرض ممن يوجه إليه الإيجاب.

The unidroit principles of international commercial contracts, art. 2.3 (1). ICC publication on 490/1, 1994.

(3) ومن ثم لكى ينعقد العقد يجب إبلاغ القبول إلى من قدم الإيجاب.

انظر :

Article 18 of U.N. Convention on contracts for the international sale of goods.

by written or spoken words or by other acts or conduct. It takes the form of an offer by one party and an acceptance by the other party.

a - Offer: الايجـاب

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offer or to be bound in case of acceptance[1]. An offer may be made to a specified person or persons, or it may be made to the public.

An offer may be terminated by:

a) rejection by the offeree: An offer is terminated when a rejection reaches the offeror[2].

b) revocation by the offeror:

1. Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.
2. However, an offer cannot be revoked.

- if it indicate, whether by stating a fixed time for acceptance or otherwise that it is irrevocable or,
- if it was reasonable for the offeree to rely on the

(1) Article 2.2 of the unidroit principles of international commercial contracts . See Olso: Srticle 10 of the U. N. convention on contracts of the international sale of goods.

(2) See article 17 of the U. N. convention on contracts for the international sale of goods.

offer as being irrevocable and the offeree acted in reliance on the offer[1].

c) the offeror's death or such insanity as deprives him of legal capacity to enter into the proposed contract.

Where an offer is terminated in one of these ways a contract cannot be created by subsubsequed acceptance.

b - Acceptance: **القبــول**

Acceptance of an offer is an expression of assent to the terms thereof made by the offeror[2], silence or inactivity dos not mean itself an acceptance[3].

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(1) Article 2.4.

(2) شروط إبرام العقد: يجب لإبرام العقد توافر :
1 – الأهلية القانونية.
2 – التعبير عن رضاء الطرفين اللذين يبرما العقد.
والتعبير عن الرضاء المتبادل يجوز أن يتم كتابة أو مشافهة أو بأية أفعال أو سلوك.
ويأخذ صورة إيجاب من أحد الطرفين وقبول من الطرف الآخر.
أ - **الإيجاب:** يجوز أن يوجه الإيجاب لشخص أو أشخاص معينين، كما يجوز أن يوجه للجمهور.
ويسقط الإيجاب بسبب من الأسباب الآتية:
أ – رفض الموجب له.
ب – الرجوع فيه من قبل الموجب.
ج – وفاة الموجب أو إصابته بجنون يفقده أهليته القانونية لإبرام العقد.
ب - **القبول:** قبول الإيجاب تعبير عن الرضاء بالشروط التى قدمها الموجب.
وإذا تضمن الرد على الإيجاب تعديلات عليه أو أقترن بشروط يجب تنفيذها، فأنه لا يعتبر قبولا بل إيجابا مضادا. ولا يعد السكوت أو عدم الرد قبول دون قرينة.

(3) See article 18 of the U.N. convention on contracts of international sale of goods.

Modified acceptance: **القبول المعدل للايجاب**

A reply to an offer which adds qualifications or requires performance of conditions, is not an acceptance but is a counter-offer[1].

Time of acceptance: **وقت القبــول**

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise[2].

Declaration of acceptance: **اعلان القبول**

An offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he dose not have a place of business or mailing address, to his habitual residence[3].

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(1) Article 2.11 of the unidroit principles.

(2) يجب أن يتحقق القبول خلال الوقت المحدد بالعرض، فإن لم يكن مقدم العرض قد حدد وقتاً معيناً لتلقى القبول ففى وقت معقول يراعى فيه الظروف، بما فى ذلك سرعة وسائل الاتصال التى يستخدمها مقدم العرض. على أنه إذا كان العرض شفويا وجب تلقى القبول فى نفس المجلس إلا إذا ثبت غير ذلك.

(3) Art. 24 of U.N. convention, (Précité).

Withdrawal of acceptance: **سحب القبول**

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective[1].

Manners of formation: **طرق انعقاد العقد**

In accordance with the unidroit principles of international contracts a contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement[2].

Section Two
Classification of contracts
تقسيمات العقود

In general, civil contracts may be classified in several ways.

1. Formal And Informal Contracts:
العقود الشكلية والعقود غير الشكلية

A formal contract is one, the legal operation of which is dependent upon the form in which it is made.

An informal contract is one, the legal operation of which does not depend upon the form in which it is

(1) يمكن سحب القبول إذا ما وصل الرجوع عن القبول إلى مقدم العرض ولو فى نفس وقت تلاقى العرض بالقبول.
Unidroit principles, (article 2.10) Olso article 22 of the U.N. convention, Precité.

(2) Article 2.1 طرق إبرام العقد: ينعقد العقد بتلاقى الإيجاب والقبول أو بتصرف الأطراف على النحو الذى يفيد ذلك.

made.

A contract under seal, like mortgage contract is void if it is not couched in the form specified by law[1].

2. Unilateral and Bilateral Contracts:

العقود الملزمة لجانب واحد والعقود الملزمة للجانبين

Unlateral contract consists of a promis or group of promises made by one of the contracting parties only.

Bilateral contract consists of mutual promises, made in exchange for each other by each of the two contracting parties[2].

3. Nominate and Innominate Contracts:

العقود المسماة والعقود غير المسماة

Innominate contract is a non-consensual contract, that it need formal procedures.

Nominate contract a consensual contract named by special names like:

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(1) العقد الشكلى هو العقد الذى تتوقف فاعليته القانونية على الشكل الذى يفرغ فيه. أما العقد غير الشكلى فهو عقد يكتسب فاعليته بصرف النظر عن الشكل الذى يتم به.
ويعتبر العقد الرسمى (المختوم) مثل عقد الرهن عقداً شكلياً ومن ثم يعد باطلا إذا لم تتم صياغته فى الشكل الذى حدده القانون.

(2) يرتب العقد الملزم لجانب واحد التزاما أو عدة التزامات على عاتق أحد الطرفين المتعاقدين فقط.
أما العقد الملزم للجانبين فيشمل التزامات متبادلة، يتحمل بها كل طرف متعاقد فى مواجهة الطرف الآخر.

Contract of Sale

Contract of exchange

Grant contract

Articles of incorporation

Loan contract

Compromise contract

Lease contract

Loan for use

Contract for work and material (contract of construction)

Concession agreement

Employment agreement

Agency agreement

Insurance contract

Contract of suretyship[1]

(1) عقد البيع ، عقد المقايضة، عقد الهبة، عقد الشركة، عقد القرض، عقد الصلح، عقد الإيجار، عقد العارية. عقد المقاولة، عقد الامتياز، عقد العمل، عقد الوكالة، عقد التأمين، عقد الكفالة.

Section Three

The International Character of the Contract

السمة الدولية للعقد

There are several criteria can used to know when the contract become an international contract, like[1].

1. The nationality of the parties (personal creciteria)[2].
2. The exchange of offer and acceptance in two different states[3].
3. The existance of transport abroad, (in sale contract)[4].
4. Effecting delivery of goods (in sale contract) or transfer of technology (in technology transfer contract) in a state other than that where offer and acceptance has been exchanged (material criteria)[5] .
5. Where the places of business of the parties exist in

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(1) هناك عدة معايير متنوعة لتحديد متى يصبح العقد عقداً دولياً.
(2) جنسية الأطراف (المعيار الشخصى).
(3) تبادل الإيجاب والقبول بين طرفين فى دول مختلفة (المعيار المكانى).
(4) نقل الشيء محل التعاقد من دولة إلى أخرى.
(5) نقل البضائع (فى عقود البيع) أو التكنولوجيا (فى عقود نقل التكنولوجيا) إلى دولة غير التى تم تبادل الإيجاب والقبول فيها (المعيار المادى).

two different states[1] (Teratorial criteria).

Examples for international contracts:

Licensing contract	عقد الترخيص
Franchising contract	عقد الامتياز التجارى
Concession agreement	اتفاق الامتياز
Exploitation contract	عقد الاستغلال
Economic development agreement (EDA)	عقد التنمية الاقتصادية
Transnational commercial contracts	العقود التجارية الدولية
Technical assistance	عقد المساعدة الفنية

(1) إذا وجد موطن الأعمال الخاص بالطرفين فى دولتين مختلفتين.
Article I of the U.N. convention on the international sale of goods.
CF. A.S. ElKosheri, la notion de contrat international, These, Paris, 1965.

Chapter Two
Drafting Of International contracts
صياغة العقود الدولية

Section one
Ways of Drafting
أساليب وطرق الصياغة

It is important to notice that there are two main different legal systems in the world:[1] French system and Anglo-Saxon system.

In French legal system drafter of international contract will find detailed provisions of law for every point whether in the general theory of sources of obligations or in the provisions of nominated contracts.

Drafting of contracts in this pattern of laws does not need details except where parties want to derogate from the supplementary rules of the governing legislation, but where they want the provisions of this legislation they do not have to state them in detail and a mere reference in one article to the provisions of such legislation is enough to form a complete contract, by saying: "all issues and matters not provided for in this contract shall be subject to the provisions of law

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(1) يجب أن نلاحظ أن هناك فروق جوهرية بين النظامين الفرنسى والانجلوأمريكى.

No..........".[1]

The matter is not so in the Anglo-Saxon system or the common law system, because provisions are mainly inspired by precedents, and to cover all area of precedents, you have to draft a very lengthy and detailed contract.

This second mode of drafting contracts prevailed in international contracts over the French mode[2].

Section Two
Principles for drafting

القواعد الأساسية لصياغة العقود

Here are some principles to be followed in drafting[3]:

1. Use short sentences where possible[4].
2. Use the active mood as much as possible[4].

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(1) ففى النظام القانونى الفرنسى يجد محرر العقد الكثير من النصوص التفصيلية سواء فى الأبواب المتعلقة بالنظرية العامة للالتزامات أم فيما يتعلق بتنظيم العقود المسماة.
ومن ثم فلا يجد محرر العقد صعوبة فهو ليس فى حاجة لصياغة بنود تفصيلية، إلا إذا أراد الأطراف الاتفاق على ما يخالف النصوص القانونية.

(2) والأمر على خلاف ذلك فى ظل النظام القانونى الأنجلو أمريكى، حيث يتبع نظام السوابق، حيث يحتاج محرر العقد لصياغة بنود تفصيلية لتغطية ما يحتاج الأطراف إلى إيضاحه، حيث يحتاج بيان قانون العقد للرجوع إلى السوابق التى تتراكم على مر السنين.
ومع صعوبته إلا أن استخدام الأسلوب الأنجلوأمريكى هو الأكثر أتباعا فى العقود الدولية.
CF. M.I. Alamedin, Op. Cit., P. 7,8.

(3) M.I. Alamedin: Op. Cit., P. 16-17.

(4) على محرر العقد استخدام عبارات قصيرة كلما أمكن ذلك.

(4) وعليه استخدام صيغة الحاضر كلما أمكن.

3. Use the present tense[1].
4. Actions are to be expressed by shall, to express a mandatory action[2].
5. Do not put a lot of provisions in one article, but make several articles and make reference to one another if need [3].
6. Use simple language[4].
7. Use numbers for terms[5].
8. Define rights and obligations of parties clearly, and give necessary definitions[6].
9. Do not tear first drafts until the end, keep them folded aside[7].
10. In drawing up the contract parties should take into account the law applicable to the contract and different types of relevant mandatory legal rules in the country of each party.
11. Parties may wish to clarify the extent to which oral exchanges, correspondent and draft

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(4) وعليه استخدام صيغة الحاضر كلما أمكن.
(1) كما أن عليه استخدام صيغة المضارع.
(2) وعندما ينص على التزام بفعل معين يجب استخدام فعل "يجب".
(3) ولا تضع كثير من النصوص فى بند واحد، وإنما بإمكانك كتابة أكثر من بند والإشارة إلى البنود المتصلة بها.
(4) استخدام لغة مبسطة فى الصياغة.
(5) ويمكن استخدام أرقام لتسلسل البنود.
(6) ويجب تعريف حقوق والتزامات الأطراف بوضوح.
(7) ولا تلقى المسودات المستخدمة حتى توقيع العقد.

documents which came about during the negotiations and which may be used to interpret the contract[1].

Section Three
Contract Parts And Terms
أجزاء وبنود العقد

An international contract is usually classified to parts, chapters, sections, which classified to articles and points or paragraphs as the following:[2]

1. Contract title
2. Contract date
3. The parties to the contract
4. Preamble
5. Contract terms
6. Closing clause
7. Signatures and attestations

1. Contract date: **تاريخ العقد**

Contract effective date: Is the date when parties sign the contract or when they commence the

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(1) ويجب أن يوضع فى الاعتبار القانون الواجب التطبيق وجميع القواعد القانونية الآمرة فى الدول التى يتبعها الأطراف، والدول التى سينفذ فيها العقد.

(2) وعادة ما يقسم العقد الدولى إلى أقسام ومواد وبنود ولا يخلو من الأقسام التالية:
عنوان العقد، تاريخ العقد، أطراف العقد، تمهيد العقد، بنود العقد، خاتمة العقد، توقيعات الأطراف والتصديقات عليها.

workers[1].

Example:

("a) This contract is mad and signed this Monday the 24th day of August 2006. By and between…..".

b) "This contract will commence when the Ist party "the contractor" receives from the 2nd party "The Employer" the notice to commence the workers on the site")[2]

2. Contract Persons: **أطراف العقد**

In contracts, obligations are created by agreement between the parties by exchange of assent.[3]

Persons are of two kinds: natural persons (human beings) and artificial persons (or corporations)[4].

In law, a person is an entity which is capable of enjoing and enforcing rights and undertaking

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(1) عادة ما يكون تاريخ سريان العقد هو تاريخ توقيعه من أطرافه أو تاريخ بدء تنفيذه.

(2) تاريخ سريان هذا العقد هو تاريخ تسلم الطرف الأول (المقاول) من الطرف الثانى (صاحب العمل) الاخطار ببدء الأعمال فى موقع الإنشاءات.

(3) تنشأ الالتزامات العقدية باتفاق أطراف التعاقد بتبادل التراضى فيما بينهم.

(4) A natural person is always a human being, whereas an artificial person is a corporation created under the law.
الشخص الطبيعى يكون دائما إنسانا، بينما الشخص المعنوى يكون مؤسسة تنشأ وفقا للقانون.

obligations [1].

In conclusion, Identity of parties includes, name, domicile, place of incorporation, address[2] of headquarters or registries office, (in case of artificial persons).

The contract parties identification may be stated at the outset as follows:

Example for the article of the natural persons:

مثال لبند الأطراف من الأشخاص الطبيعيين.

"Mr. ....
ID (personal/ family) No. ....
issued from .... Civil Registry
Office on ....
Of.. hereinafter

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(1) وفى القانون الشخص هو كائن له أهلية التمتع بالحقوق، والتعهد بالالتزامات.
والأشخاص على نوعين: الأشخاص الطبيعيون (الكائنات الحية)، والأشخاص المعنويون.
A person capacity is of two kinds:
1. the capacity to be the subject of rights; and
2- the capacity to act.

والأهلية على نوعين:
1 – أهلية الوجوب.
2 – أهلية الأداء.
تثبت أهلية الوجوب لكل شخص صغيرا أو كبيرا. فالطفل الذى يبلغ عمره سنة يرث، ويمكن أن يكون دائنا أو مدينا، ويمكن رفع دعاوى باسمه. أما أهلية الأداء فتعنى أهلية الشخص فى التعامل، وأهليته فى تحمل المسئولية عن الأضرار التى تلحق بالآخرين.
ويلزم لأهلية الأداء اكتمال سن الرشد وتنتقص بعدم بلوغ سن الرشد

(2) وعادة ما يكون للأشخاص واحد أو أكثر من صور الموطن.
Normally persons have one or more domicile.
CF. Article 10 of U.N. convention on contracts for the international sale of goods.

referred to as .... **(First Party)"**[1]

Example for the article of juristic persons:

مثال لبند الأطراف من الأشخاص المعنوية.

".. Company, S.A.E., with it's principal office at .... Commercial Register No............... , herein represented by Mr.......................... in his capacity as .... hereinafter referred to as .... **(First Party)"**[2]

Notice: in international contracts the drafter normally add the next details:

.... Company duly organized and existing under the laws of ....and having its registered office in .... hereinafter referred to as .... (Seller or buyer ets ......)[3]

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(1) السيد/ .... ويحمل بطاقة (تحقيق شخصية/ عائلية) رقم .... صادرة من سجل مدنى .... بتاريخ .... ومقر إقامته فى .... والمشار إليه فيما بعد فى هذا العقد باسم .... **(طرف أول)**

(2) شركة .... وهى شركة مساهمة مصرية، مقرها الرئيسى فى .... سجل تجارى رقم .... ويمثلها فى هذا العقد السيد/ .... بصفته .... والمشار إليها فيما بعد فى هذا العقد باسم .... **(طرف أول)**

(3) ويلاحظ أنه فى العقود الدولية، تكتب، بالإضافة إلى بيانات الشخص الاعتبارى السابقة، العبارة التالية:
شركة .... وهى شركة مؤسسة وقائمة على نحو صحيح طبقا لقوانين دولة .... ومكتبها الرئيسى مسجل فى .... والتى سوف يشار إليها فى هذا العقد بأنها .... (بائع أو مشترى أو ....).

The drafter may add with each party an indication about the person representing it or he can leave it to a special clause in contract.[1]

3. Preamble: **تمهيد العقد**

It determine contract object: this part of contract contains description of the subject matter of contract, its purpose and brief statement of agreement of parties[2], and normally start by "whereas".[3] And it normally followed by the phrase:

"Now, therefore the parties hereto[4] in consideration of the mutual promises, covenants, and agreements agree as Follows":

A- Example in concession contract:

مثال من عقد امتياز.

("Whereas. Law No. 66 of 1953, as amended, established that all raw materials, including petroleum existing in mines and quarries in A.R.E. including the territorial and continental shelf water are the property

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(1) ولمحرر العقد أن يضيف فى بند الأطراف بيان بمن يمثل كل طرف، كما يمكنه أن يترك ذلك لشرط مستقل فى العقد.

(2) M. Alamedin, Op. Cit., P. 37.

(3) يعطى هذا الجزء من أجزاء العقد ملخص عن نوع العقد والغرض من إبرامه ويبدأ عادة باستعمال كلمة "حيث أن Whereas".

(4) وعادة ما تستعمل العبارة التالية "لذا اتفق الطرفان فى مقابل الوعود المتبادلة والتعهدات التالية، على مايلى":

R. Bradgate: Drafting standard terms of trading. 1994, M.I. Alamedin, Op. Cit., P. 36.

of the State; and"[1]

"Whereas, company has applied for an exclusive concession for the exploration, development and production of petroleum in and throughout the Area described in Annexes "A" and "B" which are attached hereto and made a part hereof; and"[2]

"Whereas Y Company agrees to undertake its obligations provided hereinafter as a Contractor with respect to the exploration, development and production of petroleum in said Area; and"[3]

"Whereas the Government desires hereby to grant such concession; and"[4]

"Whereas the Minister of Petroleum and Mineral Wealth, pursuant to the provisions of Law No. 82 of 1956 may enter into a concession agreement with EGPC and with "y", as a Contractor, for the petroleum operations in the Area hereinafter referred to:......")[5]

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(1) حيث أن القانون رقم 66 لسنة 1953 بما أدخل عليه من تعديل قد نص على أن كافة المواد الخام، بما فيها البترول، الموجودة فى المناجم والمحاجر فى (ج.م.ع) بما فى ذلك الامتداد القارى والمياه الإقليمية ملك للدولة؛

(2) وحيث أن المؤسسة "س" قد تقدمت بطلب للحصول على التزام مقصور عليها بالبحث عن البترول وتنميته وإنتاجه فى كافة أنحاء المنطقة الموصوفة فى الملحقين "أ"، و"ب" المرفقين بهذه الاتفاقية والمتممين لها؛

(3) وحيث أن شركة "ص" توافق على أن تتحمل التزاماتها المنصوص عليها فيمايلى بصفتها مقاولا فيما يختص بأعمال البحث عن البترول وتنميته وإنتاجه فى المنطقة المذكورة؛

(4) وحيث أن الحكومة ترغب فى منح هذا الالتزام بموجب هذه الاتفاقية؛

(5) وحيث إن وزير البترول مخول له بموجب أحكام القانون رقم 82 لسنة 1956 أن

B. Example in international sale contract

مثال من عقد بيع دولى:

"Whereas seller designs and manufactures in England, industrial equipment and devices, stated in seller's catalogues, and

"Whereas buyer wishes to purchase "........." for its factory in Cairo, Egypt, in accordance with the specifications indicated in schedule A to this contract, which is an integral part hereof, both parties has agreed upon the following terms and conditions, in addition to the general conditions the seller submitted to the buyer and they are annexed to this contract in schedule B, which is also an integral part of this contract.[1]

4. Contract Terms: بنود أو شروط العقد

The parties, normally classified their contract to contract clauses (articles) and sub-clasuses and

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يتعاقـــد على عقد التزم مع المؤسسة ومع الشركة ص باعتبارها مقاولا للقيام بالعمليات البترولية فى المنطقة المشار إليها فيما بعد. مثال مشار إليه عند محمود محمد على صبره، صياغة العقود، ط 2005، ص 196.

(1) "حيث يقوم البائع بتصميم وتصنيع المعدات الصناعية والآلات المبينة بكتالوجاته، بانجلترا.
وحيث يرغب المشترى فى شراء معدات من نوع .... لمصنعه بالقاهرة، وفقا للمواصفات المبينة بالجدول (أ) المرفق والذى يعد جزءاً من هذا العقد، فإن الطرفين قد اتفقا وفقا للبنود والشروط التالية، علاوة على ما ورد بالملحق (ب) المرفق والذى يعد جزءاً من هذا العقد".

paragraphs which concern the next points[1]:

A. Agreement

C. Contract object

C. Cause or consideration

D. Responsibility and liability

E. Applicable law

G. Jurisdiction[2]

A. Agreement:

A contract enter into performance after exchange of assent (offer and acceptance) such as the following:[3]

"Example:

(1. This sale is made by legal offer and acceptance by the parties hereto.[4]

2. Whereas seller desires to sell industrial equipment to buyer, and

Whereas, Buyers desires to purchase the property

(1) يغلب أن يقسم أطراف العقد عقدهم إلى شروط وشروط فرعية وفقرات تشير إلى البنود الآتية:

(2) بند التراضى أو الاتفاق، بند محل العقد، السبب (الباعث)، بند المسئولية، القانون الواجب التطبيق، الاختصاص القضائى.

(3) ينتج العقد آثاره بتبادل التراضى "الإيجاب والقبول".

(4) تم هذا البيع بتبادل الإيجاب والقبول بين الأطراف المذكورين، وحيث يرغب البائع فى أن يبيع المعدات الصناعية إلى المشترى، وحيث يرغب المشترى فى شراء هذه المعدات، مثال مشار إليه عند محمود صبره، المرجع السابق، ص 208.

from seller…….”.)

B. Contract object:

Contract object is the matter of a contract.[1]

Examples:

1. Example in construction contract:

مثال من عقد مقاولة

“Purpose of contract:

The purpose of the Contract is the construction of Road ………………… on a total length of ………. Km^2 as per the Drawings and Specifications specifically prepared for this Contract, and of any new Works which the Contractor may be asked to execute during the term of the Contract in accordance with the Contract Documents as stipulated in Clause (xx) below”.[2]

2. Example in “Clé en main” contract:

من عقد تسليم مفتاح

(“Contract object:

The Supplier undertakes to supply,

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(1) محل العقد هو موضوع العقد، أو هو الهدف من العقد. انظر الدكتور نزيه المهدى، النظرية العامة للالتزام، الجزء الأول، مصادر الالتزام، دار النهضة العربية، ط 1999، ص 128.

(2) الغرض من هذا العقد هو إنشاء الطريق ……………… لمسافة كلية قدرها (…………..) كم2 طبقا للمخططات والمواصفات المعدة خصيصا لهذا الغرض وكذلك إنشاء أية أعمال جديدة يطلب من المقاول تنفيذها فى اثناء مدة تنفيذ العقد طبقا لمستنداته ووفقا لما تنص عليه المادة الثانية أدناه. مثال مشار إليه عند محمود صبره، المرجع السابق، ص 217.

install/erect and commission materials and equipment as per the following:

1. Bill of materials as Appendix (A.1).
2. Installation as Appendix (A.2).
3. Supervision of installation as Appendix (A.3).
4. Scope of work as Appendix (A.4).
5. Documentation as Appendix (A.5).
6. Training as Appendix (A.6).")[1]

C. Cause[2] or consideration[3]: **السبب أو المقابل**

It mean the assent of the parties to creat rights and obligations.

Examples:

1. Example in simple contracts: **فى العقود البسيطة**

(" First Party in consideration of the sum of

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(1) يتعهد المورد بتوريد، وتركيب / أو تشييد وبدء تشغيل المواد والمعدات وفقا لمايلى:
1 – قائمة المواد حسب الملحق (أ-1).
2 – التركيب حسب الملحق (أ-2).
3 – الإشراف على التركيب حسب الملحق (أ-3).
4 – نطاق العمل حسب الملحق (أ-4).
5 – الوثائق حسب الملحق (أ-5).
6 – التدريب حسب الملحق (أ-6).
مثال مشار إليه بالمرجع السابق، ص 219.

(2) السبب القانونى فى العقد ويتمثل أساسا فى نية الأطراف المتعاقدة إنشاء حقوق والتزامات.

(3) المقابل مصطلح انجليزى يقصد به أن يترتب على العقد منفعة أو فائدة يحصل عليها كل متعاقد وهى تعادل فكرة السبب القانونى. انظر الدكتور فتحى عبد الرحيم عبد الله، العناصر المكونة للعقد كمصدر للالتزام فى القانون المصرى والقانون الانجليزى. مجموعة البحوث القانونية والاقتصادية، كلية الحقوق بالمنصورة، 1978، ص 291.

$.......... sells to the Second Party ....)[1]

2, Example in detailed contracts: فى العقود التفصيلية

("1. The Purchase Price is contained in Annex (A) attached to this Contract.

2. As full consideration for furnishing and delivery of the Plant, in accordance with Exhibit (B). Article (xx) entitled "Commencement and Completion". Supplier will be paid the Total Purchase Price as shown in Exhibit C, Section entitled "Schedule of Quantities and Prices".)[2]

3. Example in construction contract: من عقد مقاولة

("-Contract Price:

- The total value of the Contract is preliminary according to Form No. (1) of the Contract Forms. This value comprises the construction. Completion and maintenance of all the Works detailed in the Contract Documents, supply of the materials, machinery, constructional plant and transportation, wages, and anything else necessary to the successful completion of the Works according to Contract

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(1) "يوافق الطرف الأول فى مقابل مبلغ .... دولار على أن يبيع إلى الطرف الثانى".

(2) 1- سعر الشراء المتفق عليه موضح فى الملحق (أ) المرفق بهذا العقد.
2- فى مقابل تقديم وتسليم "المحطة طبقا للملحق (ب)، المادة (7) المعنونة بالبدء والإتمام"، يدفع المالك إلى المورد اجمالى سعر الشراء الموضح فى الملحق (ج) ، القسم المعنون بـ"جدول الكميات والأسعار".

Documents.

- The unit rates given in the Bills of Quantities, Volume (3) of the Contract Documents, include the costs of the work, materials, labour, administrative expenses, profits, and everything necessary for the execution, completion and maintenance of the Works according to the conditions, drawings, and designs of this Contract.")[1]

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(1) القيمة الاجمالية للعقد مبدئية طبقا للنموذج رقم (1) من نماذج العقد. وتشمل هذه القيمة إتمام إنشاء كل الأعمال وصيانها وفقا للتفصيل الوارد فى مستندات العقد، وتوريد المواد والآلات ومحطة التشييد والنقل والأجور وكل ما يلزم لنجاح إتمام الأعمال وفقا لمستندات العقد.

- فئات الوحدات المبينة فى قوائم الكميات بالمجلد رقم (3) من مستندات العقد تشمل تكاليف الأعمال والمواد والعمالة والمصاريف الإدارية والأرباح وكل ما يلزم لتنفيذ الأعمال وإتمامها وصيانتها طبقا للشروط والرسومات والتصميمات الواردة فى العقد.

"2. Payment certificate **مستخلص الدفع**

- The Contractor shall submit to the Engineer at the end of every month one original and seven copies of statement of payment due to Contractor, signed by the Contractor or his agent, detailing the quantities and value of completed Works and also the quantities and value of the materials on site for the permanent Works. The Engineer shall check this statement and submit and associated payment certificate."

For any work for which prices are based on given quantities and unit rates, the value of the Works shall be calculated on the basis of the quantities actually performed. Whether these are more or less than the given quantity due to any discrepancy in quantities given in the Bills of Quantities, or due to any variations of the Works instructed in accordance with the powers given by the Owner under the Contract".)

Where work included in the Bills of Quantities has been priced on a lump sum basis, payment for such work will be made in proportion to the percentage completion".

4. Example in license contract : من عقد ترخيص صناعى

("1. Grant of License 1 – منح الترخيص

Grant: Subject to the Limitations set forth in this license Agreement, licensor hereby grants to Licensee the right exclusively[1] in the Territory to manufacture, sell and distribute the Licensed Products and the

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Regular payments will be made to the Contractor within thirty (30 days) from the issuance of the payment certificate by the Engineer. Such certificate by the Engineer. Such certification will include 90% of the value of the completed Works, measured in accordance with the Contract, together with 75% of the value of the materials stored on site and approved for inclusion in the permanent Works. The value of the materials on site will be fixed at the time of their delivery to site, and payment will only be made if these materials are properly stored and protected: such storage and protection being the Contractor's responsibility".

يقدم المقاول إلى المهندس فى نهاية كل شهر أصلا واحدا مع سبع صور من كشف المبالغ المستحقة له موقعا منه أو من وكيله ويبين بالتفصيل كميات الأعمال المنجزة وقيمتها وكلك كميات وقيمة المواد الموجودة بالموقع للأعمال الدائمة. ويفحص المهندس الكشف ويقدمه مرفقا به شهادة الدفع.

فيما يتعلق بأى عمل مسعر على أساس كميات وفئات وحدات معينة، تحسب قيمة العمل وفقا للكميات المنجزة فعليا سواء كانت أكثر أو أقل من الكمية المحددة بسبب الاختلاف بينها وبين الكميات المبينة فى قائمة الكميات أو بسبب أى تعديلات للأعمال تصدر وفقا للسلطة المخولة من المالك بموجب العقد.

إذا كان العمل المدرج فى قوائم الكميات محسوباً سعره على أساس الفئة الشاملة، تدفع قيمة ذلك العمل على أساس نسبة منوية من حجم العمل المنجز بالفعل.

تدفع المدفوعات العادية إلى المقاول فى غضون ثلاثين (30) يوما من إصدار شهادة الدفع من المهندس. وتغطى هذه الشهادة 90% من قيمة الأعمال المنجزة محسوبة وفقا لما ينص عليه العقد مع 75% من قيمة المواد المعتمدة المخزنة بالموقع والتى تدخل فى الأعمال الدائمة. وتحسب قيمة المواد الموجودة بالموقع على أساس سعر ثابت وقت تسليمها إلى الموقع ولا تدفع قيمتها إلا إذا تم تخزينها وحمايتها بطريقة صحيحة؛ وتقع مسئولية تخزينها وحمايتها على عاتق المقاول وينفذ ذلك على حسابه.

Licensee hereby accepts such exclusive rights "[1]

"2- Royalties and Terms of payment

2 – الإتاوات وشروط الدفع

- Royalty Rate: **فئة الإتـــــــاوة:**

The Licensee agrees that during the Term of this License Agreement, it shall pay the Licensor a "royalty" in the amount computed as follows:")[2]

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(1) مع مراعاة القيود الموضحة فى هذا الترخيص، يمنح المرخص بموجبه المرخص له وحده الحق فى تصنيع وبيع وتوزيع المنتجات المرخص فيها، ويقبل المرخص له هذه الحقوق المقصورة عليه.

(2) يوافق المرخص له على أن يدفع، فى أثناء مدة هذا الترخيص، "إتاوة"تحسب وفقا لمايلى

"- Statements and Payments **الكشوف والمدفوعات**

On or before the 10th day following the close of each calendar month. Licensee shall submit to Licensor a full, accurate and detailed statement signed by its Chief Financial Officer showing the style or model number, description, number of units, price charged per unit, Agreed List Price per unit and total sales for each Licensed Product in each country of the Territory. The statements shall be made in such form as prescribed by Licensor or on such other from as is approved in writing by Licensor. Statements under this Paragraph must be provided to Licensor irrespective of whether sales have been made or any Royalties are due for any particular month. All payments shall be in the form of a check made payable to xxx and sent to the following address: xxx (or to such other address as designated by Licensor). All late payments past 90 days shall be subject to interest at a rate equal to one percent (1%) over the prime :rate set by the largest xxx Bank during the period in question."

الكشوف والمدفوعات:

بحلول اليوم العاشر عقب نهاية كل شهر ميلادى، يقدم المرخص له إلى المرخص كشفاً كاملاً دقيقاً ومفصلاً موقعاً من "مدير حساباته المالية" يبين به رقم الموديل، والصنف، وعدد الوحدات، والسعر المحصل لكل وحدة، وسعر القائمة المتفق عليه لكل وحدة وإجمالى المبيعات لكل منتج مرخص فيه فى كل دولة فى الإقليم. ويجب إعداد الكشف بالشكل الذى يحدده المرخص أو فى أى شكل يعتمده كتابياً. ويجب تقديم الكشوف المشار

E. Applicable law clause[1]:

شرط تحديد القانون الواجب التطبيق

The choice of the system of law[2] applicable to cases containing a foreign element, is one of the essential clauses of the contract. The law applicable to the contract may affect the contract in different ways:

For example, that law may contain rules on the interpretation of contracts and may contain presumptions as to the meaning of certain words or phrases. It may also contain mandatory rules regulating the form or validity of contracts which it is advisable to take into account in drawing up the contract. In certain circumstances, the applicable law

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إليها فى هذه الفقرة إلى المرخص بصرف النظر عما إذا كانت هناك مبيعات قد تمت أم لا، أو أية إتاوات مستحقة عن أى شهر معين. ويجب الدفع بشيك واجب الدفع إلى ××× وإرساله إلى العنوان التالى: ×××× (أو إلى أى عنوان يحدده المرخص). وتخضع كل المدفوعات المتأخرة لفائدة بسعر يعادل 1% زيادة على سعر الأساس الذى يحدده بنك ×××× فى أثناء الفترة المعنية

(1)CF. R. J. Weintraub: Choice of Law contract, Iowa Law Review, Vol, 54, No. 3, 1968, P. 399.

J.R. Low; Choice of Law clause in international contracts – A practical approach, Harvard international Law Journal, 12, 1971, P.3.

(2) The fundamental purpose of law is to impose order in human society. Law does this by imposing sanctions against persons who commit or, in certain cases, omit certain kinds of behaviour which violate and/ or breach that order.

The final purpose, of this state of things, is to prevent anyone from disturbing the social order, bodily integrity of persons and the safety of their belongings (property).

By doing so, law has a deterrent (رادع) and decisive impact and influence upon human beings.

may contain non mandatory rules regulating the contract in regard to certain issues. For instance, in regard to the quality of goods to be supplied.[1]

Time of choice of applicable law:

وقت اختيار القانون الواجب التطبيق:

1. The applicable law may be determined at a very early stage of their relationship. Thus, an offeror can determined the applicable law in his offer.
2. The applicable law may be determined after negotiations have taken place of main technical and commercial issues and have resulted in a measure of agreement between them.[2]

Determination of the applicable law:

كيفية تحديد القانون الواجب التطبيق:

The parties may choose the law of:

1. The country with which the contract is most

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(1) أن شرط اختيار القانون الواجب التطبيق من الشروط الأساسية فى العلاقات ذات العنصر الأجنبى، فقد يؤثر هذا القانون فى العقد من وجوه متنوعة:
فقد يؤثر القانون الواجب التطبيق فى تفسير شروط العقد، وقد يتضمن قرائن تفيد فى تحديد معانى بعض الكلمات والمصطلحات والعبارات. كما قد يتضمن قواعد آمرة تحدد الشكل الذى يفرغ فيه أو اللازم استيفاءه لصحة العقد. كما قد يتضمن قواعد أخرى تكميلية تنظم بعض المسائل العقدية كتحديد درجة الجودة اللازمة فى البضاعة محل التعاقد.

(2) قد يتم اختيار القانون الواجب التطبيق :
1 - فى مرحلة مبكرة من العلاقة ، حيث يختاره الموجب ضمن الإيجاب الذى يعلنه.
2 - أو قد يختاره أطراف العلاقة بعد الانتهاء من التفاوض على الشروط الفنية والتجارية وصياغة العقد فيما بينهم.

closely connected[1].

2. The country of the central administration of one of the parties effecting performance or its principle place of business.
3. The place of contracting; or
4. The place of the execution of the contract.[2]

The drafter have to notice that:

A contract may be subject to several laws from different points of view, for instance: there may be a law for the substance, anther for form, a third for the capacity of parties, a fourths for the procedure.... Etc.[3]

G. Jurisdiction: **شرط تحديد الاختصاص القضائى**

The parties usually choose the court which will settle their disputes.

Courts are the main instrument established by each State for the settlement of disputes. Every State

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(1) In general approach C.F. Salah Eldin Gamal : Conflict of laws, Dar AlFeker ElGamae, 2006.

(2) فقد يتم تحديد القانون الواجب التطبيق من قوانين:
1 – الدولة الأكثر صلة بالعقد.
2 – الدولة التى بها المقر الرئيسى لأحد الطرفين حيث نشاطه الرئيسى أو المركز الرئيسى لأعماله.
3 - الدولة مكان إبرام العقد.
4 - الدولة محل تنفيذ العقد

(3) قد يخضع العقد لعدة قوانين بالنظر إلى المسألة محل النزاع. فقد يخضع لقانون يحكم موضوع التعاقد ولآخر يحكم شكل التعاقد ولثالث يحكم أهلية الأطراف، ولرابع يحكم الإجراءات ..... وهكذا.

is free to determine, choose and fashion its own court system according to constitutional limitations applicable in its national legal order.

Each State is also at liberate to precise its substantive law as well as the rules of procedure, whether written or oral, which will be applied and used in its own courts.[1]

Kinds of courts: **أنواع المحاكم**

- there are courts of first instance, courts of appeal, the high (supreme) court or court of cassation[2].

In order to render a valid judgment, a court must have jurisdiction as to the subject-matter, as to the parties and be competent territorially.

The question of jurisdiction is very complicated because there are so many different kinds of courts, so many different kinds of parties, living or residing in so many different kinds of places[3].

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(1) عادة ما يختار الأطراف المحكمة التى تفصل فيما ينشأ بينهم من منازعات.
والمحاكم الأداة الأساسية التى تقيمها الدولة لتسوية المنازعات.
ولكل دولة الحرية فى اختيار وتحديد شكل نظام المحاكم وفقا للقواعد الدستورية السائدة فيها.

(2) There are also, as to subject-matter, commercial courts, civil courts, criminal courts, labor courts, military courts .... etc.

(3) تتنوع درجات المحاكم، فهناك المحاكم الجزئية والابتدائية والاستئنافية والمحاكم العليا
ولإصدار حكم قضائى صحيح قانونا يجب أن تكون المحكمة مختصة من حيث الأشخاص ومن حيث المكان.
وهى مسألة فى غاية التعقيد نظرا لتعدد المحاكم نوعيا ومكانيا وتعدد أطراف النزاع

Allocation of jurisdiction: **كيفية توطين النزاع:**

In international contracts, The parties may be choose between the courts of:

1. The country with which the contract is most closely connected.
2. The country of one of them.
3. The courts of the place of contracting.
4. The courts of the place where is their subject….. etc.[1]

وأماكن توطنهم.

How A Case Is Judged:

It is well established that any case passes, in general, by the following stages:

1. To bring a suit, the plaintiff must file a petition with the clerk of the court. The petition consists, inter alia, of:
   a) A preliminary information (such as the names of the parties and the type of the action);
   b) A statement of the facts;
   c) A statement of the rules of law relied upon;
   d) A statement of the claims (the prayer for relief).
2. Then the clerk prepares a summons and with a copy of the petition sends it to the defendant.
3. The defendant has the right to reply in a "petition of reply" (which contains the things as the petition), and in which he writes his legal defenses (these defenses may be lack of venue, lack of jurisdiction, another action pending…. etc.) and he may also assert new fact, counter-claims…. etc.).
4. Finally, the court, after hearing the interested parties and after deliberations- which must be secret – delivers its judgment.

(1) فى المنازعات الناشئة عن العقود الدولية يمكن للأطراف الاختيار بين:
1 – محاكم الدولة الأقرب صلة بالنزاع.
2 – محاكم الدولة التى يتبعها أحد الأطراف.

The first question to be examined by a court in a case where a foreign element is envolved is to decide whether it has jurisdiction to adjudicate upon the matter. Once, the court has decided this question affirmatively, it has to choose the law to be applied[1] .

Example:

("The courts of .... have (exclusive/ non-exclusive) jurisdiction to hear any dispute arising out of the interpretation, application or enforcement of this Contract. The parties hereto shall submit to any courts that may hear appeals from those courts in respect of any proceedings in connection with this Contract".)[2]

5. Contract clousing claus: **خاتمة العقد**

The contract parties used to use the next clause[3]:

(In whiteness whereof, the said parties have hereunto set their hands the day and year first above written).[4]

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3 – محاكم مكان إبرام العقد.

4 – محاكم المكان محل تنفيذ العقد.

(1) وأول ما تقوم به المحكمة عند عرض النزاع على القضاء هو تحديد ما إذا كانت مختصة بنظر النزاع من عدمه. فإذا ما تأكد اختصاصها بدأت فى تحديد القانون الواجب التطبيق.

(2) تختص محاكم .... وحدها (اختصاصا مقصورا/ غير مقصور عليها) بالنظر فى أى نزاع ينشأ بين الطرفين بسبب تفسير أو تطبيق أو تنفيذ هذا العقد. ويخضع الطرفان لأية محاكم يجوز لها أن تنظر فى طلبات الاستئناف المقدمة ضد قرارات تلك المحاكم فيما يتعلق بأية إجراءات بخصوص هذا العقد.

(3) عادة ما يستخدم أطراف العقد الصيغة التالية:

(4) وبما ذكر حرر هذا العقد فى اليوم والسنة المذكورين فى صدره ووقع من الطرفين.

6. Counterparts clause: شرط تبادل النسخ

The contract parties used to use the next clause:

(Executed in duplicate, one copy for necessary action.)[1]

7. Signature:

At the end of the contract the signatures of the parties appear to give legal value to the document. Signatures must be accompanied with stating the names of signatories, their titles, their capacity, for which party are they signing, the place and country where they sign and the date.

Exhibits should be signed by parties or their representatives because they contain document referred to in the contract but not bound up within it such as technical specification, geographical locations, price calculations, etc[2].

Example:

(Name: .... :الاسم
Signature .... : التوقيع
Date .... :التاريخ
Place: .... :المكان)

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(1) حرر هذا العقد من نسختين بيد كل طرف نسخة للعمل بها عند الضرورة.

(2) يظهر بند التوقيع فى نهاية العقد ليضفى الصفة القانونية على المستند. حيث يتضمن اسم وتوقيع الأطراف وعن أى طرف يوقع كل منهم، ويتضمن بيان تاريخ ومكان التوقيع. ويلاحظ أنه يجب التوقيع على ملحقات ومرفقات العقد التى أشير فيه إليها.
M.I. Alamedin, Op. Cit., P. 109.

Chapter Three
Termination of International Contracts
إنهاء العقود الدولية

Section One
Ways of termination
طرق إنهاء العقود

A contract may be terminated by one of these ways:

1. By Performance:

A contract may be terminated by full performance.

2. By Expiration of its definite period:

A difinate period contract may be terminated by expiration[1].

3 .By agreement:

The parties may used a defeasance clause in their contract, to permit to any of them by terminating it in the event of a material breach of the contract, or if the

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(1) قد يتم إنهاء العقد بأحدى الطرق الآتية:
1 - بالتنفيذ: فقد ينتهى العقد بتنفيذه كاملا.
2 - بانتهاء المدة: قد ينتهى العقد بانتهاء مدته (فى حالة العقود محددة المدة مثل عقود العمل محددة المدة وعقود الترخيص الصناعى).

other party fails to fulfill any of its obligations[1].

Or if one of the parties become bankrupt, make arrangements with creditors, become insolvent or otherwise unable to conduct its business in a normal manner as a result of financial difficulties[2].

In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether

(a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;

(b) strict compliance with the obligation which has not been performed is of essence under the contract;

(c) the non-performance is intentional or reckless;

(d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;

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(1) وقد ينتهى العقد بالاتفاق، وذلك بأن يدرج فى العقد شرط فاسخ يسمح لأى من الأطراف بانهاءه فى حالة وقوع مخالفة واضحة للعقد، أو فشل أى من باقى الأطراف فى الوفاء بأى من التزاماته.

(2) كما يمكن إنهاء العقد فى حالة إفلاس أحد الأطراف أو قيامه بعمل ترتيبات مع الدائنين، أو إعساره، أو عدم قدرته لأى سبب آخر على إدارة أعماله بطريقة عادية نتيجة لصعوبات مالية.

(e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.

In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed[1].

The Party terminating the Agreement shall do so by serving written notice on the other Party[2]. Which termination shall have immediate effect without further judicial intervention and without prejudice to the terminating Party's rights in law[3].

4. By oberation of law:

A contract may be terminated by oberation of

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(1) Article 7.3.1 of Unidroit principles for international commercial contracts.

(2) انظر المادة 7.3.2 من مبادئ اليونيدروا الصادرة عام 1992. والتى تنص على:
" Notice of termination):

1. The right of a party to terminate the contract is exercised by notice to the other party.
2. If performance has been offered late or otherwise docs not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance".

(3) وعلى الطرف الذى يقوم بإنهاء العقد أن يفعل ذلك عن طريق إرسال اخطار كتابى إلى الطرف الآخر، ويسرى الإنهاء فورا دون اللجوء إلى القضاء، ودون الإخلال بالحقوق القانونية للطرف الذى ينهى العقد.

law such as in case of definite impossibility"[1].

5. By court judgment:

Each party may use or be used in the event of breach of obligations[2].

6. By unilaterally act[3].

Section Two

Effects of termination

آثار إنهاء العقود

Termination of the contract releases both parties from their obligation to effect and to receive future performance, but it does not preclude a claim for damages for non-performance. So, termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination[4].

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(1) قد ينتهى العقد بقوة القانون كما هو الشأن حال توافر شروط حالة من حالات القوة القاهرة.

(2) قد ينتهى العقد بحكم المحكمة: فلكل طرف أن يرفع دعواه على الآخر فى حالة مخالفة أى منهم لالتزاماته.

(3) وقد ينتهى العقد بالإرادة المنفردة.

(4) بانهاء أو انتهاء العقد يتحرر كل طرف من التزاماته مستقبلا. إلا أنه لا يمنع من طلب التعويض عن عدم التنفيذ. ولذلك فأن الإنهاء والانتهاء لا يؤثر على أى بند يتصل بتسوية المنازعات أو أى بند وضع لينفذه حتى ولو أنتهى العقد (مثل اشتراط الالتزام بالسرية). انظر المادة (7.3.5) من مبادىء اليونيورو العام 1994 ترجمة مكتب الشلقانى.

Examples:

1. Simple Example: **مثال من عقد بسيط**

("Without prejudice to the terms and conditions hereof, this contract shall be automatically cancelled without need to notice, warning, or taking legal proceedings if either party fails to fulfill any of its obligations hereunder and the other party shall have the right to claim appropriate damages"**)**[1].

2. Example in Administration Contract:

مثال من عقد إدارة

("Contract termination: **إنهاء العقد**

1) Either Party shall have the right to terminate this Agreement in the event of a material breach of this Agreement by the other party by first serving a written notice on the Party in breach and detailing the facts of the breach and giving the Party in breach thirty (30) days calendar days to remedy such breach[2].

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(1) مع عدم الإخلال بما جاء بشروط التعاقد، يعتبر العقد مفسوخا من تلقاء نفسه دون حاجة إلى تنبيه أو إنذار أو اتخاذ إجراءات قانونية متى أخل أحد الطرفين بأى التزام من التزاماته الواردة فى هذا العقد، ويحق للطرف الآخر الرجوع عليه بالتعويضات المناسبة. انظر محمود صبره، المرجع السابق.

(2) يحق لأى طرف إنهاء العقد فى حالة حدوث مخالفة جوهرية له من جانب الطرف الآخر بعد اخطار الطرف المخالف للعقد كتابيا بوقائع المخالفة مع إعطائه مهلة ثلاثين (30) يوما لإصلاحها.

If the breach is not remedied within the said thirty (30) days, the injured Party may terminate this Agreement with immediate effect and without any judicial intervention and without prejudice to the injured Party's rights in Law, by serving a written notice to the Party in breach)[1].

3. Example in License Contract:

مثال من عقد ترخيص صناعى[2]

("Default and termination: التخلف عن الأداء والإنهاء

1) Licensor, at its option and without prejudice to any rights and remedies which it may have, may immediately terminate this License upon the happening of any of the following events:"[3]

a)If the Licensee shall be adjudicated a bankrupt or become insolvent or admits in writing its inability to pay its debts as they mature or if a receiver or trustee is appointed, whether permanent or temporary, of the Licensee's property or any party thereof, is

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(1) وإذا لم يتم إصلاح المخالفة فى غضون الثلاثين (30) يوما المذكورة، يجوز للطرف المتضرر إنهاء العقد فى الحال دون اللجوء إلى القضاء ودون إخلال بحقوق الطرف المتضرر المنصوص عليها قانونا، وذلك عن طريق إرسال اخطار كتابى إلى الطرف المخالف.

(2) لمزيد من التفاصيل انظر مؤلفنا عقود نقل التكنولوجيا ، دار النهضة العربية، 1995.

(3) يجوز للمرخص، وفقا لما يتراءى له وبدون الإخلال بأية حقوق وتدابير أضافية من حقه الحصول عليها، أن ينهى فورا هذا الترخيص بمجرد وقوع أى واقعة من الوقائع التالية:

appointed by any court of competent jurisdiction, or if the Licensee shall make a general assignment for the benefit of his creditors, or makes, a proposal under the bankruptcy act and is not discharged within ninety (90) days after such appointment or general assignment[1].

b) If a judgment, writ or warrant of attachment or of any similar process shall be entered or filed against Licensee or against any portion of its property, and remains un-vacted or un-stayed for a period of ninety (90) days[2].

c) If procedures are instituted for or against the Licensee for its reorganization or rearrangement or insolvency proceedings or other proceedings for the relief of debtors are instituted by or against Licensee[3].

d) "If Licensee or any principal of Licensee is convicted of a criminal offense which, in the

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(1) أ) إذا حكم بإفلاس المرخص له أو أصبح معسراً أو أقر كتابيا بعجزه عن دفع ديونه فى مواعيد استحقاقها أو إذا عينت محكمة مختصة، بشكل دائم أو مؤقت، حارساً قضائياً أو أمينا على أمواله أو أموال أى طرف يتبعه، أو إذا أجرى تنازلاً عاماً لصالح دائنيه، أو قدم عرضاً بموجب قانون الإفلاس، ولم يتم إبراء ذمته فى غضون تسعين (90) يوما من ذلك التعيين أو التنازل العام.

(2) ب) إذا قيد أو أودع حكما أو تكليفا أو أمراً بالحجز أو أى إجراء مماثل ضد المرخص له أو أى جزء من ممتلكاته وظل دون تصحيحه أو وقفه لمدة تسعين (90) يوما.

(3) ج) إذا اتخذت إجراءات لصالح المرخص له أو ضده لإعادة تنظيمه أو ترتيبه أو إجراءات لإشهار إعساره أو اتخذت أى إجراءات أخرى لإعفاء مدينيه منه أو ضده.

reasonable opinion of Licensor, directly or indirectly adversely affects the reputation or goodwill of the Licensor or the System"[1].

2) "Licensee shall be in default under this Agreement and Licensor may, at its option, terminate this Agreement, without affording Licensee an opportunity to cure the default, effective immediately upon receipt of notice by Licensee upon the occurrence of any of the following events":[2]

a) "any purported assignment or transfer provided for in this Agreement[3].

b) Licensee violates the covenants contained in Clause ......[4].

c) Licensee have made any material misrepresentation in connection with Licensee's application to Licensor for the rights granted under this Agreement[5].

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(1) د) إذا أدين المرخص له أو أى من تابعيه بجريمة جنائية تؤثر سلبا، حسب التقدير المعقول للمرخص بصورة مباشرة أو غير مباشرة على سمعة المرخص أو أسمه أو على النظام "محل الترخيص".

(2) 2) يكون المرخص له مقصرا بموجب هذا العقد ويجوز للمرخص، وفقا لما يتراءى له، أن ينهى هذا العقد دون إعطاء المرخص له أية فرصة لتصحيح تقصيره، بمجرد تسلم المرخص له اخطارا عند وقوع أى حدث من الأحداث التالية:

(3) أ) أى تنازل صورى أو حوالة صورية لالتزاماته التى نص عليها العقد.

(4) ب) إذا خالف المرخص له التعهدات الواردة فى البند xxx .

(5) ج) إذا قدم المرخص له أى إقرارات جوهرية مضللة فيما يتعلق بطلب المرخص له إلى المرخص بخصوص الحقوق الممنوحة بموجب هذا العقد.

d) Licensee makes any willful and material falsification of any report, statement, or other written data furnished to Licensor. Any report submitted pursuant to this Agreement shall be conclusively deemed to be willful and materially false if it understated Gross Sales more than two (2%) per cent[1].

e) Licensee, within ten (10) days after receipt of written notice from Licensor that any required payment is overdue, fails to make such payment to Licensor[2].

f) Licensee abandons the Business.[3]

g) Licensee fails, for a period of ten (10) days after notification of non-compliance, to comply with any law or regulation applicable to the operation of the Business[4].

h) Licensee repeatedly fails to comply with one or more requirements of this Agreement, whether or

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(1) د) إذا قام المرخص له عمداً بتزوير جوهرى فى أى تقرير أو بيان أو بيانات كتابية مقدمة إلى المرخص. وأى تقرير مقدم بموجب هذا العقد يعتبر بشكل دامغ مزورا عن عمد بشكل جوهرى إذا قلل من إجمالى المبيعات بنسبة تزيد على 2%.

(2) هـ) إذا لم يدفع المرخص له إلى المرخص، فى غضون عشرة (10) أيام من تاريخ تلقيه اخطاراً كتابياً من المرخص، أية مدفوعات مستحقة متأخرة.

(3) و) إذا ترك المرخص له النشاط.

(4) ز) إذا لم يلتزم المرخص له، لمدة عشرة (10) أيام من تاريخ اخطاره بعدم الالتزام، بأى قانون أو لائحة واجبة التطبيق لتشغيل النشاط.

not corrected after notice"[1].

3) "Except as otherwise provided in this Agreement, Licensee shall have thirty (30) days after its receipt from Licensor of a written notice, within which to remedy any default under this Agreement, and to provide evidence thereof to Licensor. If any such default is not cured within the specified time, this Agreement shall terminate without further notice to Licensee. Effective immediately upon expiration of the thirty (30) days period. This Agreement may be terminated pursuant to this paragraph 3 if, among other things, Licensee fails to substantially comply with any of the material obligations imposed by this Agreement, or fails to carry out the terms of this Agreement in good faith")[2].

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(1) ح) إذا تخلف المرخص له بشكل متكرر عن الالتزام بأى متطلبات فى هذا العقد سواء تم، أو لم يتم، تصحيحها بعد اخطاره بذلك.

(2) 3) ما لم ينص العقد على غير ذلك، تكون أمام المرخص له مدة ثلاثين (30) يوما من تاريخ تلقيه من المرخص اخطارا كتابيا، لعلاج أى تقصير بموجب هذا العقد ولتقديم الأدلة على هذا العلاج إلى المرخص. وإذا لم يتم علاج هذا التقصير فى غضون الفترة المحددة، ينتهى هذا العقد دون أى اخطار إلى المرخص له اعتباراً من نهاية مدة ثلاثين (30) يوما. ويجوز إنهاء هذا العقد بحكم هذه الفقرة رقم (3) إذا لم يلتزم المرخص له، من بين التزاماته الجوهرية التى يفرضها هذا العقد أو إذا لم ينفذ بنوده بحسن نية. انظر محمود صبره، المرجع السابق، ص 312.

4. Example in Construction contract:

مثال من عقد مقاولة

(Early Termination **الإنهاء المبكر**

The Owner may terminate this Contract upon fourteen (14) days written notice to the Contractor. Should the Contractor not fulfill to a substantial extent his obligations as stipulated in this agreement for more than twenty-eight (28) consecutive days[1].

"The Contractor may terminate this Contract upon fourteen (14) days written notice to the Owner, if the Owner delays the payment procedures of its own part a stipulated in this agreement for more than twenty-eight (28) consecutive days without justifiable reason"[2].

"In the event of early termination for the above-said reasons, the Contractor shall be paid by the Owner through the Grant Aid a fair and reasonable proportion of the Contract Price calculated on the basis of the Contractor's work carried out up to the

(1) يجوز للمالك إنهاء هذا العقد بموجب اخطار كتابى مدته أربعة عشرة (14) يوما يرسله إلى المقاول إذا لم ينفذ الأخير بشكل جوهرى التزاماته المنصوص عليها فى هذا العقد لمدة تزيد على ثمانية وعشرين (28) يوما متتالية.

(2) يجوز للمقاول إنهاء هذا العقد بموجب اخطار كتابى مدته أربعة عشر (14) يوما يرسله إلى المالك إذا أخر المالك إجراءات الدفع من جانبه حسبما هو منصوص عليه فى هذا العقد لمدة تزيد على ثمانية وعشرين (28) يوما متتالية بدون سبب يمكن تبريره.

termination date")[1].

5. Example In Represention Contract:

مثال من عقد تمثيل تجارى

("Either party may terminate this Agreement upon thirty (30) days notice in the event that the other party fails to cure any material breach of its obligations within thirty (30) days of written notice of same"[2].

"This Agreement may be terminated by Manufacturer upon five (5) days written notice for any of the following reasons:[3]

a) If Representative makes an assignment for the benefit of creditors, is adjudged an involuntary bankrupt, is placed into voluntary or involuntary receivership.[4]

b) If Representative provides prospective

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(1) فى حالة الإنهاء المبكر للعقد للأسباب الموضحة أعلاه، يدفع المالك إلى المقاول نسبة عادلة ومعقولة من مبلغ العقد تحتسب على أساس الأعمال التى نفذها المقاول حتى تاريخ الإنهاء.

(2) يجوز لأى من الطرفين أن ينهى هذا العقد بإعطاء اخطار مدته ثلاثون (30) يوما إذا لم يقم الطرف الآخر بعلاج أى خرق جوهرى لالتزاماته فى غضون فترة ثلاثين (30) يوما من إعطاء اخطار كتابى بذلك.

(3) يجوز إنهاء هذا العقد من قبل الشركة المصنعة بإعطاء اخطار كتابى مدته خمسة (5) أيام لأى من السببين التاليين:

(4) أ) إذا تنازل "المندوب" لصالح دائنيه أو حكم عليه رغما عنه بالإفلاس أو وضع تحت الحراسة سواء بمحض إرادته أو رغما عنه.

customer(s) with information in connection with this Agreement which is false or misleading;[1]

The termination of this Agreement shall not prejudice the rights and obligations of the parties which had accrued prior to such termination")[2].

Section Three
Limitation and Exemption Liability Clauses
شروط التخفيف أو الإعفاء من المسئولية

The contract may contain one or more of limitation and exemption clauses (like force major and hardship clauses) for one or more of the next purposes[3]:

1. Allocation of risk[4].

2. Division of responsibility[5].

3. Reducing time of negotiations[6].

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(1) ب) إذا قدم "المندوب" إلى العملاء الفعليين أو المرتقبين معلومات كاذبة أو مضللة تتعلق بهذا العقد.

(2) لا يخل إنهاء هذا العقد بحقوق والتزامات أطرافه التى تستحق قبل إنهائه. انظر محمود صبره، المرجع السابق.

(3) قد يتضمن العقد واحد أو أكثر من شروط تحديد المسئولية أو الهروب منها (مثل شروط القوة القاهرة وتغير الظروف) لتحقيق واحد أو أكثر من الأهداف التالية:

(4) وضع التبعات الناشئة عن العقد على عاتق أحد أطرافه.

(5) توزيع المسئولية (مما يؤدى إلى تقليل المخاطر الواقعة على الأطراف).

(6) تقليل وقت المفاوضات.

A. Force majeure: القوة القاهرة

This kind of exemption clauses is common in international contracts .

Conditions of force majeure:

شروط تحقق حالة القوة القاهرة

Force majeure is exceptional event or circumstance:

a. which is beyond a Party's control.

b. which such Party could not reasonably have provided against before entering into the Contract.

c. which, having arisen, such Party could not reasonably have avoided or overcome, and

d. which is not substantially attributable to the other Party[1].

Effects of force majeure: آثار تحقق حالة القوة القاهرة

1. Non-performance by a party is excused if that

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(1) شروط تحقق حالة القوة القاهرة هى:

أ - أن يقع خارج سيطرة أحد الطرفين،

ب – دون أن يكون بإمكان أحد الطرفين الاحتياط له بشكل معقول قبل توقيع العقد.

ج - دون أن يكون بإمكان أحد الطرفين، عند ظهوره، أن يتجنبه أو يتغلب عليه بشكل معقول،

د - ولا يعزى بشكل جوهرى إلى الطرف الأخر.

Article 19 of Fidic contract.

FIDIC: is the French acronym for the international Federation of consulting Engineers it was Founded in 1913 to promote the professional interests of member associations.

party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences

2. When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract[1].

Notice of force majeure: **الاخطار بالقوة القاهرة**

The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt[2].

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(1) Article 7.I.7 unidroit principles, 1994.

وبصفة عامة فان معنى ذلك أن :

1 – عدم التنفيذ يمكن أن يبرر إذا ما أثبت الطرف الذى توقف عن تنفيذ العقد أن عدم التنفيذ يرجع إلى عائق يخرج عن سيطرته ولا يمكن توقعه حتى يتمكن من وضعه فى الحسبان عند التعاقد أو من تحديه أو التغلب عليه أو على آثاره.

2 – فإذا ما كان العائق عن التنفيذ مؤقتا فأن تبرير عدم التنفيذ يمتد لمدة وجود هذا العائق

(2) Article 7.1.7-3 Unidroit principles.

Events of Force majeure: **حالات القوة القاهرة**

we can state some of the events classified as force majeure events:

1. War, hostilities (whether war be declared or not), invasion, act of foreign enemies,
2. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war.
3. riot, commotion, disorder, strike.
4. Munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
5. natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity(1).

ويجب على الطرف الذى توقف عن تنفيذ التزاماته اخطار الطرف الآخر بالمانع الذى قابله وبآثاره وعدم قدرته على التنفيذ فأن لم يفعل أو إذا وصل الاخطار متأخرا كان الطرف المتضرر من القوة القاهرة ملزما بالتعويض عن عدم إرسال الاخطار أو تأخيره.

(1) ويجوز أن تتضمن "القوة القاهرة"، على سبيل المثال لا الحصر، إحداثا أو ظروفا استثنائية من النوع المذكور أدناه، مادامت تستوفى الشروط من (أ) إلى (د) السابق ذكرها:

1- الحروب، أو الأعمال العدائية (سواء أعلنت الحرب أو لم تعلن)، أو الغزو، أو الأفعال الصادرة عن أعداء أجانب،

2- التمرد، أو الإرهاب، أو الثورات، أو العصيان، أو الاستيلاء على السلطة من قبل الجيش أو بالقوة، أو الحروب المدنية،

3- الاخلال بالأمن (الشغب) ، أو الاضطرابات، أو الإخلال بالنظم، أو الإضرابات.

4- الذخائر الحربية، أو المواد المتفجرة، أو التأين الإشعاعى، أو التلوث بالنشاط

But the following events may not be agreeable for force majeure clause: increased expenses, shortage of fund[1].

In conclusion: If any event or circumstance outside the control of the parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitled the Parties to be released from further performance of the Parties to be released from further performance of the Contract, then upon notice by either party to the Party of such event or circumstance:

The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract[2].

الإشعاعی، باستثناء ما قد يعزى إلى استخدام المقاول لمثل هذه الأخطار،

5 -الكوارث الطبيعية مثل الزلازل، أو الأعاصير، أو العواصف العاتية، أو النشاط البركانى.

انظر نص المادة 19 من العقد النموذجى للفيديك.

(1) ولا تعد الحالات التالية من قبيل القوة القاهرة: زيادة الأسعار ونقص التمويل. انظر:
M.I. ALamedin, Op. Cit., P. 71.

(2) بصرف النظر عن أى حكم آخر إذا طرأ حدث أو ظرف خارج سيطرة الطرفين (يتضمن، على سبيل المثال لا الحصر، القوة القاهرة) جعل وفاء أى من الطرفين أو كليهما بالتزاماته أو بالتزاماتهما التعاقدية مستحيلا أو مخالفا للقانون، أو أعطى الحق للطرفين، بموجب القانون المعمول به فى العقد فى أن يتم أعفاؤهما من الاستمرار فى أداء العقد، حينئذ وبموجب إخطار أى طرف للطرف الآخر بهذا الحدث أو الظرف يعفى الطرفان من الاستمرار فى تنفيذ العقد، دون الاخلال بحقوق أى منهما فيما يتصل بأى اخلال سابق بالعقد. انظر المادة 19 من العقد النموذجى للفيديك السابق الإشارة إليه.

Examples for force majeure clauses:

A: Example in international sale contract:

مثال من عقد بيع دولى:

("Force majeure means any event outside seller's control, including, but not limited to the following.......").

B. Example in construction contract:

مثال من عقد مقاولة:

("Termination if work prevented by force majeure:

Notwithstanding the provisions of Article xx above, should any period of Force Majeure continue in effect for more than seven (7) days causing interference with the completion or continuation of the Work as specified hereunder, Company may after seven (7) days written notice terminate this Contract with immediate effect with respect to any portion of the Work then not completed without liability or obligation because of such termination other than the obligation to pay Contractor the amounts computed as provided in Article (y) above.

Company reserves the rights, in the event of termination due to Force Majeure, to receive competitive bids for the resumption and completion of

the Work")[1].

Example:

(If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, (or should have become aware), of the relevant event or circumstance constituting Force Majeure.

The Party shal, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations

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(1) بغض النظر عن أحكام المادة (××) السابقة، إذا استمرت أية فترة من فترات القوة القاهرة أكثر من سبعة (7) أيام مما تسبب فى حدوث تداخل فى إكمال العمل أو استمراره حسبما هو محدد فى هذا العقد، جاز للشركة بعد إعطاء اخطار كتابى مدته سبعة (7) أيام إنهاء العقد فى الحال بالنسبة إلى أى جزء من العمل لم يكن قد اكتمل وقتها دون مسئولية أو التزام بسبب هذا الإنهاء باستثناء الالتزام بأن تدفع الشركة للمقاول المبالغ المحسوبة كما هو منصوص عليها فى المادة (2) السابقة فيما عدا المادة (ص).
وتحتفظ الشركة، فى حالة إنهاء العقد بسبب القوة القاهرة، بحقها فى تلقى العطاءات المنافسة لاستئناف واتمام "العمل".
انظر محمود صبره، المرجع السابق، ص 321.

of either Party to make payments to the Party under the Contract")[1].

B. Hardship Clause: **شرط الصعوبات المرهقة** [2]

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished.

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(1) إذا منعت القوة القاهرة أو كان من شأنها أن تمنع طرفا من أداء أى من التزاماته بموجب العقد، يوجه هذا الطرف اخطارا إلى الطرف الآخر بالأحداث أو الظروف التى تمثل قوة قاهرة ويذكر فى الاخطار بالتفصيل الالتزامات التى منع أو التى سوف يمنع من أدائها. على أن يوجه هذا الاخطار خلال 14 يوما بعد أن يصبح على علم (أو يفترض أنه قد أصبح على علم)، بالحدث أو الظرف ذى الصلة الذى يمثل قوة قاهرة.
ويعفى الطرف، بعد توجيه الاخطار، من أداء هذه الالتزامات مادامت هذه القوة القاهرة تمنعه من أدائها.
وبصرف النظر عن أى حكم فى هذا البند، لا تسرى القوة القاهرة على التزامات أى من الطرفين بسداد دفعات للطرف الآخر بموجب العقد.
انظر نص البند 19 من العقد النموذجى للفيديك.

(2) انظر:
H. Strohbach: Force majeur and hardship clauses in international commercial contracts and arbitration, J. int. arb., Vol. I., No. I, April, 1984, P. 39 – 40.
وهى نصوص تعاقدية يمكن من خلالها للأطراف طلب إعادة التوازن أو تصحيح العقد حال طرأت تغييرات جوهرية على العناصر التى كانت سببا جوهريا دافعا للتعاقد، فتساعد على مواجهة التغير فى الظروف السياسية والاقتصادية والمالية والتكنولوجية التى تفرز نتائج تضر بمصالح أحد المتعاقدين.
انظر:
Unictral: Working party on the new international Economic order, Doc. A/CN-9/ WG/V/ WP.9? Add. 4. P. 3.
وانظر المادة 6.2.1 من مبادىء اليونيدروا الصادرة عام 1994. وانظر محمود صبره، المرجع السابق، ص 420 – 421. وانظر مؤلفنا فى التحكيم وتنازع القوانين ، طبعة دار الفكر الجامعى، 2005، ص 140.

Conditions of hardship: شروط تحقق الصعوبات المرهقة

For an event to constitute hardship, it must meet the following conditions:

1. It must occur or become known to the disadvantaged party after the conclusion of the contract;

2. It could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract.

3.It must be beyond the control of the disadvantaged party; and

4. The risk of such event was not assumed by the disadvantaged party.

Effects of hardship: آثار تحقق الصعوبات المرهقة

In Case of hardship, the disadvantaged party may request re-negotiation . The request for re-negotiation must indicate the grounds on which it is based. However, such request does not entitle the disadvantaged party to withhold performance.

If the parties fail to reach agreement within a reasonable time, either party may resort to the court and If the court finds hardship, it may, if reasonable:

- Terminate the contract at a date and on terms to be fixed; or
- adapt the contract with a view to restoring its equilibrium(1).

Example:

("In the event that during the period of this agreement, the general situation and/or the data on which this agreement is based are substantially changed so that either party suffers severe and unforeseeable show hardship, they shall consult and show mutual understanding with a view to making

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(1) - توجد حالة الصعوبات المرهقة إذا وقعت أحداث تخل بصورة جوهرية بتوازن العقد سواء بارتفاع تكاليف التنفيذ على أحد الأطراف أو بانخفاض قيمة ما يتلقاه أحد الأطراف.
- ويشترط لاعتبار حدث ما من حالات الصعوبات المرهقة:
- أن يقع أو يعلم به الطرف الذى تعرض له بعد إبرام العقد،
- ألا يكون بالإمكان أخذه فى الحسبان بصورة معقولة عند إبرام العقد من قبل الطرف الذى تعرض له.
- أن يخرج عن سيطرة الطرف الذى تعرض له.
- ألا يكون الطرف الذى تعرض له قد توقع تحمل تبعته.
- وفى حالة وقوع حدث من الأحداث المنشئة للصعوبات المرهقة، يجوز للطرف الذى تأثر به طلب إعادة التفاوض مع بيان الأسس التى يقوم عليها. ومع ذلك، لا يخول طلب إعادة التفاوض، فى حد ذاته، الطرف الذى تأثر بالصعوبة المرهقة الحق فى الامتناع عن التنفيذ.
- إذا لم يتوصل الطرفان إلى اتفاق خلال مدة معقولة، فيجوز لأى منهما اللجوء إلى القضاء.
- إذا رأت المحكمة توافر الظروف الطارئة، فيحق لها، مادام ذلك معقولا:
- إنهاء العقد فى التاريخ ووفقا للشروط التى يتم تحديدها، أو
- تعديل العقد بهدف إعادة التوازن إليه.

انظر المادة 6.2.1 من مبادئ اليونيدروا لعام 1994.

such revisions as would be justified by circumstances which could not reasonably be froseen, as of the date on which this agreement was entered into, in order to resort the equitable character of this agreement")[1].

Section Four
Remedies for breach of contract
جبر الضرر الناشىء عن مخالفة العقد

A breach of contract is a non-performance, without justification, of any contractual duty.

Remedies for breach of contract may be by:

A. Restitution: **الرد أو اعادة الحال إلى ما كان عليه**

On termination of the contract either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable[2].

B. Specific performance: **التنفيـذ العينـى**

Meaning the rendering of a promised performance.

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(1) نص مستخرج من عقد بين C.F.R – OZO- ERAP/ Sofrple منشور فى Rev. arb. عام 1973 ، ص 69.

(2) CF. Article 7.3.6 Unidroit principles, 1994.

C. Damages: **التعويض المالى**

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused[1].

The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived[2].

Damages are not recoverable for harm that the plaintiff should have foreseen and could have avoided by reasonable effort.

Examples:

1. Example in Fidic Contract: [3] **مثال من عقد الفيديك**

(Liquidated damages for delay clause:

التعويض الاتفاقى عن التأخير:

If the Contractor fails to comply with the Time for Completion in accordance with Clause 48, for the

(1) CF. Article 7.4.1 Unidroit principles, 1994.
(2) Article 7.4.2. Unidroit principles, 1994.
(3) البند 47 من بنود العقد النموذجى للفيديك السابق الإشارة إليه.

whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43[1] , then the Contractor shall pay to the Employer the relevant sum stated in Appendix to Tender as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant. Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender)[2].

("The Employer may, without prejudice to any other method of recovery, deduct the monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and

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(1) البند 43 من بنود عقد الفيديك.

(2) البند 48 من بنود العقد النموذجى للفيديك.
إذا لم يلتزم المقاول بميعاد الإتمام المنصوص عليه فى البند 48 بالنسبة إلى كل الأعمال، أو قصر فى إتمام أى قسم منها، إذا كان ذلك مطبقا، خلال الوقت المحدد له فى البند 43، فعلى المقاول، أن يدفع إلى رب العمل المبلغ المحدد فى ملحق العطاء بوصفه تعويضا اتفاقيا عن هذا الإخلال،وليس كجزاء (ويكون ذلك المبلغ هو المبلغ الوحيد الذى يستحق على المقاول بسبب هذا الإخلال) وذلك عن كل يوم أو جزء من يوم ينقضى من تاريخ انتهاء وقت الإتمام حتى التاريخ المحدد فى شهادة تسلم الأعمال كلها أو (تاريخ تسلم) القسم المعنى مع مراعاة تطبيق الحد الأقصى الوارد فى ملحق العطاء.

liabilities under the Contract").[1]

2. Example in Sale Contract: مثال من عقد بيع دولى ("Liquidated Damages

التعويضات الاتفاقية لمخالفة العقد

If Buyer should default or breach its obligations under this agreement, seller shall be entitled to receive and retain the deposit as liquidated damages. The parties acknowledge that said sum is fair and reasonable in light of all of the circumstances existing on the date of this agreement")[2].

3. Example in Fidic contract for reduction of liquidated Damages:[3] :

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(1) ولرب العمل، دون أن يضر ذلك بأية وسيلة أخرى للاسترداد، أن يخصم قيمة هذه التعويضات من المبالغ المستحقة أو التى ستستحق للمقاول. ولا يؤدى سداد المقاول لهذه المبالغ أو خصمها من مستحقاته، إلى إعفاءه من التزامه بإتمام الأعمال أو من التزاماته أو مسئولياته الأخرى طبقا للعقد.

(2) فى حالة تخلف المشترى عن الوفاء بالتزاماته أو مخالفته لها بموجب هذا العقد، يحق للبائع الحصول على العربون المدفوع واحتجازه باعتباره تعويضات متفق عليها. ويقر الطرفان بأن هذا المبلغ عادل ومعقول فى ضوء كل الظروف القائمة وقت تحرير هذا العقد.
انظر محمود صبره، المرجع السابق، ص 435.

(3) يقصد بالتعويضات الاتفاقية مبلغ ثابت من المال يحدده الطرفان المتعاقدان مسبقا كتعويض إجمالى متفق عليه يستحقه الطرف المضرور فى حالة خرق الطرف الآخر للعقد. انظر المادة224 مدنى مصرى . وانظر :
WWW. 4554. Com/ Glossory/ Liquidated _ damages. Html.
Kendall Freeman: Upholding Liquidated damages and avoiding penalties, WWW. Legal 500. Com/ devs/ UK/ CO/ UKCO- 022. html.
ولمزيد من التفاصيل باللغة العربية. انظر مؤلف محمود صبره، صياغة العقود، ص 422، وانظر المادة 7/4-13 من مبادىء اليونيدروا التى تنص على أنه :

مثال لتخفيض قيمة التعويض الاتفاقى:

("If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thererof"**)**(1).

"1 – إذا اتفق فى العقد على أن يدفع الطرف الذى لا ينفذ، مبلغاً محدداً للطرف الدائن عن عدم التنفيذ، استحق الطرف الدائن هذا المبلغ بصرف النظر عن حقيقة ما لحقه من ضرر.

2 – ومع ذلك، وبالرغم من وجود أى اتفاق يخالف ذلك، يجوز تخفيض المبلغ المحدد إلى مبلغ معقول إذا كان يفوق بكثير الضرر الناتج عن عدم التنفيذ وعن الظروف الأخرى".

(1) إذا تم إصدار شهادة تسلم على أى جزء من الأعمال أو عن قسم منها، قبل موعد إتمام الأعمال كلها أو قبل موعد إتمام قسم منها، إذا كان ذلك مطبقا فى (العقد)، فيتم تخفيض قيمة التعويض الاتفاقى عن التأخير فى إتمام الأعمال أو باقى هذا القسم، خلال المدة التالية للتاريخ الوارد فى شهادة التسلم، ويكون التخفيض، مالم ينص العقد على أحكام بديلة، بنسبة قيمة ذلك الجزء الذى تم تسليمه إلى قيمة الأعمال أو قيمة القسم محل التأخير. وتسرى أحكام هذه الفقرة على معدل التعويض الاتفاقى عن التأخير فحسب دون حده الأقصى.

2. Example in Construction Contract:

مثال من عقد مقاولة

("Liquidated Damages for Daley:

التعويضات الاتفاقية عن التأخير:

1) If the Contractor fails to achieve completion of the Works within the time prescribed by Clause xx hereof, then the Contractor shall pay to the Employer the sum stated in the Contract as liquidated damages for such default and not as a penalty for every day or part of a day which shall elapse between the time prescribed by Clause xx hereof and the date of certified completion of the Works"[1].

"2) The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies in his hands, due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract")[2].

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(1) 1) فى حالة تخلف المقاول عن إتمام الأعمال فى غضون الفترة المحددة فى البند (xx) من هذا العقد، يدفع المقاول لصاحب العمل المبلغ الموضح فى العقد كتعويض متفق عليه عن هذا التقصير، وليس كغرامة، عن كل يوم أو جزء من يوم يمر بين الوقت المحدد فى البند xx وتاريخ الإتمام المعتمد للأعمال.

(2) 2) يجوز لصاحب العمل، مع عدم الإخلال بأية وسيلة أخرى للتعويض، خصم مبلغ هذه التعويضات من أى أموال بحوزته مستحقة أو قد تصبح مستحقة للمقاول. ولا يعفى دفع أو خصم هذه التعويضات المقاول من التزامه بإتمام الأعمال أو من أية التزامات أو مسئوليات أخرى تقع على عاتقه بموجب العقد.

Chapter Four
Settlement of Disputes
تسوية المنازعات

Most private international disputes involve matters of trade and commerce. These matters are generally concerned with business transactions. Most of the disputes in international commerce arise from areas such as the international sale of goods, international carriage of goods, international banking and finance, international liceing agreements, international construction work and foreign investment[1].

Litigation is the traditional method used for settling international contracts disputes. However, various other dispute resolution methods, such as arbitration and mediation (amicable settlement), are increasingly being utilized in recent times. This may be due to the number of actual or perceived

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(1) تتصل معظم المنازعات الخاصة الدولية بمعاملات التجارة الدولية وتنشأ معظم هذه المنازعات عن عقود البيع الدولى، وعقود النقل الدولى للسلع، والمعاملات المصرفية الدولية والعقود الدولية لمنح تراخيص استخدام براءات الاختراع أو المعرفة الفنية، وعقود المقاولات الدولية والاستثمار الأجنبى. انظر:
I. Turley: International Commercial Law study Guide, Deakin University, 1997. P. 180.

disadvantages of litigation[1] Specially that the solution may not help with the parties' desire to continue their business relationships[2].

Section One
Amicable Settlement
التسوية الودية

The parties may be prefer to attempt to settle dispute amicably before the commencement of arbitration[3].

Example in Fidic contract[4]: **مثال من عقد الفيديك**

(1. "In the event of any dispute arising out of or in connection with the contract, the parties shall, in good faith through their managers involved in the dispute, attempt to negotiate a settlement within 10 working days from the date the dispute has arisen.

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(1) وإن كان التقاضى (Litigation) هو الطريق التقليدى لتسوية منازعات العقود الدولية، إلا أن هناك طرق أخرى لحل هذه المنازعات مثل التحكيم، والتوفيق (التسوية الودية) التى يتزايد الاقبال عليها، فى الفترة الأخيرة، وهو ما قد يرجع إلى مساوئ التقاضى أمام المحاكم التقليدية. انظر:

K. Mackie, D. Miles and W. Marsh: Commercial dispute resolution (Butterworths, 1995, P. 18.

Margret Wang: Are alternative dispute resolution methods superior to litigation in resolving disputes in international commerce?, Arbitration international, Vol. 16. Nov. 2, P. 189.

(2) لا سيما وأن الأسلوب التقليدى للتقاضى قد لا يكون الأسلوب المناسب لمساعدة أطراف يرغبون فى استمرار علاقاتهم التجارية.

(3) وقد يفضل الأطراف محاولة تسوية أى نزاع وديا قبل بدء التحكيم شريطة إمكان بدئه، ما لم يتفق الأطراف على غير ذلك.

(4) انظر بنود العقد النموذجى للفيديك السابق الإشارة إليه.

Failing this, the top managers a each party shall within 5 days attempt to reach a negotiated settlement."[1]

2. "If the dispute is not resolved by negotiation, the parties shall seek to settle the dispute by mediation in accordance with the xxx Rules." [2]

3. "If the dispute is not resolved within 45 days following the filing of a Request for Mediation or within such other period as the parties may agree in writing, the dispute must be finally settled by arbitration in accordance with the Rules of Arbitration of the xx.")[3]

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(1) 1- فى حالة نشوب أى نزاع بسبب العقد أو فيما يتعلق به، يحاول الأطراف، بحسن نية عن طريق مديريهم الضالعين فى النزاع، التفاوض للتوصل إلى تسوية خلال عشرة أيام من تاريخ نشوء النزاع. وإذا لم يتم التوصل إلى تسوية فى غضون فترة الأيام العشرة، يحاول كبار المديرين لدى كل طرف التوصل إلى تسوية من خلال التفاوض فى غضون خمسة أيام.

(2) 2- إذا لم يتم يحل النزاع بطريق التفاوض، يحاول الأطراف تسويته بطريق الوساطة طبقا لقواعد xxxx .

(3) 3- إذا لم يحل النزاع فى غضون 45 يوما عقب تقديم طلب الوساطة أو فى غضون الفترة التى تحددها الأطراف كتابيا، يحل النزاع فى النهاية بطريق التحكيم طبقا لقواعد تحكيم xxx .

Section Two
Arbitration
التحكيــم

A. Arbitration Agreement: اتفاق التحكيم

1. Nature of arbitration: طبيعة التحكيم

Arbitration is a semi-Judicial and a more Formal dispute resolution process whereby parties refer their dispute to the arbitrator, a qualified and independent third party, for determination.

2. Arbitration Clause: شرط التحكيم

International contracts usually contain arbitration clause. By this clause, any dispute, controversy or claim arising out of or relating to the contract, or the breach, termination or invalidity thereof, shall be decided by arbitration [1].

3. Scope of arbitration clause: نطاق شرط التحكيم

Arbitration shall apply to all disputes that may arise between the Parties (or shall be limited to some events[2].

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(1) أى نزاع أو خلاف أو مطالبة تنشأ عن هذا العقد أو فيما يتعلق به أو بخرقه أو إنهائه أو بطلانه يتم الفصل فيه بطريق التحكيم الخاص .

(2) يسرى التحكيم على كل النزاعات التى تنشأ بين الطرفين (أو يقتصر على الحالات التالية......)

4. Nomination of arbitrators: **تعيين المحكمين**

The Parties shall appoint a sole arbitrator (or, in case of appointing 3 arbitrators, each party shall appoint an arbitrator and the two appointed arbitrators shall appoint the presiding arbitrator) to decide on the dispute. If a party fails to appoint its arbitrator, or the two appointed arbitrators fail to appoint the presiding arbitrator the appointing authority shall appoint that arbitrator or arbitrators".[1]

B. Arbitral Award: **حكم التحكيم**

The arbitral Award is final, binding, and self-executing. Each party have the right to enter the arbitral award in a court of competent jurisdiction or obtain a court order for its enforcement[2].

1. Contents of arbitral award:

Each arbitral decision shall contain:

1. the names, address, and nationalities of the

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(1) يعين الطرفان محكما واحدا (أو ، فى حالة تعيين ثلاثة محكمين، يعين كل طرف محكماً، ويعين المحكمان المعينان المحكم الثالث الذى يتولى رئاسة هيئة التحكيم) للفصل فى النزاع. وفى حالة عدم استطاعة أى طرف تعيين المحكم الذى يختاره، أو عدم استطاعة المحكمين المعينين تعيين المحكم الثالث، تعين الجهة المنوط بها التعيين ذلك المحكم أو أولئك المحكمين.

(2) ويلاحظ أن حكم التحكيم حكم نهائى وملزم ويصدر مشمول بالنفاذ، وأن لكل طرف من أطراف التحكيم إيداع حكم التحكيم بأية محكمة مختصة أو استصدار أمر قضائى لإنفاذه.

arbitrators.[1]

2. the name of the registrar or the clerk.[2]
3. the date on which the award[3]
4. the place at arbitration.[4]
5. A description of the parties to the case.[5]
6. copy of the arbitration agreement.[6]
7. A statement of facts.[7].
8. the arguments of each side.[8]
9. the final sub-missions of each party.[9]
10. the reasoning.[10]
11. the decision of the arbitrators [11]

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(1) أسماء المحكمين و عناوينهم وجنسياتهم

(2) اسم الكاتب

The duty of the clerks is to keep records during trails.

وظيفة الكاتب هى تسجيل كل ما يقع أثناء الجلسة.

(3) تاريخ إصدار حكم التحكيم.

(4) مكان التحكيم.

(5) أسماء الخصوم و عناوينهم

(6) صورة من اتفاق التحكيم

(7) ملخص الوقائع.

(8) طلبات ومستندات ودفوع كل طرف من الأطراف.

(9) الطلبات النهائية لكل طرف.

(10) الأسباب.

(11) منطوق حكم المحكمين.

انظر المادة 3/43 من القانون المصرى رقم 27 لسنة 1994 بشأن التحكيم فى المواد المدنية والتجارية. وانظر المادة 43 من اتفاقية عمان للتحكيم التجارى لسنة 1987.

2. Annulment of an arbitral aword:[1]

إبطال حكم التحكيم

The annulment of an arbitral award may be based on one or more of the following causes:[2]

1. the tribunal was not properly constituted, or[3]
2. the tribunal has manifestly exceeded its powers or competences.[4]

   If an arbitration tribunal has exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred in a question of law or committed a fundamental fault in procedure, its decision may be annulled.[5]

Art No (5) the New_York convention on the recognition and enforcement of foreign arbitral awards of 1958.

(1) CF. Salah Gamal: international effectivenss of arbitral awards, 2004, P. 118, ss.

J. Robert: La convention Europenne sur l'arbitrage commercial international, Dalloz. 1961, Chorn. P. 175.

(2) يمكن إبطال حكم التحكيم إذا تحقق واحد أو أكثر من الأسباب الآتية:

It is well established that for an act to be declared void only one cause is sufficient (ex una causa nullities); consequyently there is no need to establish all or even a multiplicity of causes.

(3) عدم تشكيل المحكمة (هيئة التحكيم) تشكيلا صحيحاً.

(4) تجاوز هيئة التحكيم حدود سلطاتها أو اختصاصاها.

CF. art 53.1- e. Egyptian arbitration Law No. 27, 1994.

(5) إذا تجاوزت المحكمة ولايتها أو اختصاصها ، أو تقاعست عن ممارسة الاختصاص الممنوح لها، أو أخطأت فى مسائل القانون أو ارتكبت خطأ جوهريا فى الإجراءات بمكن إبطال حكمها.

CF. Abo Alwaffa, Op. Cit., P. 56.

3. there has been a serious departure from a fundamental rule of procedure.[1]

4. If there was no an arbitration agreement[2].

C. The applicable law: **القانون الواجب التطبيق**

The parties choose the law govering the procedural and substantive aspects of the arbitration.

D. The place: **مكان التحكيم**

The parties or the arbitrator (s) are free to select the place of arbitration[3].

Example in Fidic contract:

مثال لشرط التحكيم فى عقد الفيديك[4]

("Settlement of disputes **شرط تسوية المنازعات**

Engineer's Decision **قرار المهندس**

- If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with,

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(1) إذا وجدت مخالفة جسيمة لقاعدة من قواعد الإجراءات.

(2) إذا لم يكن هناك اتفاق على اللجوء للتحكيم. انظر مؤلفنا المشترك: الفعالية الدولية لقبول التحكيم فى منازعات التجارة الدولية، دار الفكر الجامعى، ط 2004، ص 118.

(3) يختار أطراف النزاع القانون الذى يحكم الجوانب الإجرائية والموضوعية للتحكيم. انظر المادة 17 من قواعد غرفة التجارة الدولية لعام 1998، والمادة 1/42 من اتفاقية واشنطن لعام 1965 بإنشاء المركز الدولى لتسوية منازعات الاستثمار.

(4) CF. international construction contracts and the resolution of disputes, ICC- FIDIC Conference, 12-13 Oct. 2006.

or arising out of, the Contract or the execution of the Works whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state it is made pursuant to this Clause"[1].

- "Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case continue to proceed with the Works with all due

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(1) إذا نشأ نزاع، أيا كان نوعه، بين رب العمل والمقاول مرتبط بالعقد أو ناشئ عنه أو مرتبط أو ناشئ عن تنفيذ الأعمال، سواء نشأ خلال تنفيذها أو بعد إتمامها أو سواء قبل أو بعد أى جحود أو إنكار أو أى صورة أخرى لإنهاء العقد، بما فى ذلك أى نزاع متعلق برأى أو أمر أو قرار أو شهادة أو تقييم من قبل المهندس، يجب إحالة موضوع النزاع أولا إلى المهندس كتابة مع إرسال صورة من هذا الكتاب إلى الطرف الآخر. ويتعين أن يشار فى كتاب الإحالة إلى أنها تمت إعمالا لهذا البند. على أن يخطر المهندس رب العمل والمقاول بقراره فى مدة لا تتجاوز 84 يوما تالية ليوم تسلمه كتاب الإحالة. ويتعين أن يشار فى هذا القرار إلى أنه أتخذ إعمالا لهذا البند.

diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award"[1].

- "If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty- fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventeenth day after the day on which he received notice of such decision, or on or before the seventeenth day after the day on which he received notice of such decision, or on or before the seventeenth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, **of his intention to commence arbitration**, as hereinafter provided as to the matter in dispute. Such notice shall establish

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(1) وعلى المقاول فى كل حالة، ما لم يكن العقد قد جدد أو انهى، أن يواصل تنفيذ الأعمال بكل الجهد الواجب، وعلى المقاول ورب العمل أن ينفذا، دون إبطاء، أى قرار يصدر عن المهندس إلا إذا كان قد رجع عنه، أو حتى يرجع عنه، فى تسوية ودية أو فى حكم محكمين، كما هو منصوص عليه فيمايلى.

the entitlement of the party giving the same to commence arbitration, as hereinafter provided as to the matter in dispute. Such notice shall establish the entitlement oi the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause (76-4), no arbitration in respect thereof may be commenced unless such notice is given".[1]

- "If the Engineer has given notification of his decision as to a matter in dispute to the Employer and Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the partied received notice as to such decision from the Engineer, the said decision, shall become final and binding upon the Employer and the Contractor")[2].

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(1) وإذا لم يرض رب العمل أو المقاول عن أى قرار للمهندس، أو إذا لم يقم المهندس بتوجيه إخطار بقراره فى، أو قبل، اليوم الرابع والثمانين التالى ليوم تسلم (كتاب) الإحالة، يكون لكل من رب العمل أو المقاول، فى، أو قبل، اليوم السبعين التالى ليوم تسلم الإخطار بهذا القرار، أو فى أو قبل ، اليوم السبعين التالى ليوم انتهاء مدة الأربعة والثمانين يوما المذكورة، على حسب الأحوال، إخطار الطرف الآخر، مع (إرسال) صورة إلى المهندس للعلم، برغبته فى بدء التحكيم طبقا للنصوص الواردة فيما بعد فى شأن الموضوع محل النزاع. ويثبت هذا الإخطار للطرف الذى أرسله الحق فى البدء فى التحكيم فى شأن النزاع على النحو المنصوص عليه فيما بعد، ومع مراعاة البند الفرعى (67-4)، فإن إجراءات التحكيم فى هذا الشأن لا تبدأ إلا بعد توجيه هذا الإخطار.

(2) إذا وجه المهندس إلى رب العمل والمقاول إخطارا بقراره فى موضوع النزاع ولم يرسل أى منهما إخطارا بنيته فى بدء التحكيم بشأن هذا النزاع فى، أو قبل،اليوم الـ 70 التالى لليوم الذى تسلما فيه إخطار المهندس، أصبح القرار المذكور نهائيا وملزما لكل منهما.

Example in Construction Contract:

مثال من عقد مقاولة للتحكيم أمام مركز القاهرة الإقليمـــى للتحكــيم الدولى

("Settlement of disputes **تسوية المنازعات**

1."If any dispute of any kind whatsoever shall arise between Consultant or Architect or Owner and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works, or after its completion and whether before or after the termination, abandonment or breach of the Contract) it shall in the first place be referred to the Owner in writing through Consultant who within a period of 60 days after being requested to do so shall give written notice of his decision to the Contractor. Save as hereinafter provided, such decision in respect to every matter so referred shall be final and binding upon the Contractor, and shall forthwith be given effect by the Contractor who shall proceed with the Works with all due diligence whether the requests arbitration as hereinafter provided or not. If the Owner has given written notice through Consultant of his decision to the Contractor and no request for arbitration has been communicated to him through

Consultant of his decision to the Contractor and no request for arbitration has been communicated to him through Consultant by the Contractor within a period of 60 days from receipt of such notice, the said decision shall remain final and binding upon the Owner and the Contractor. If the Owner shall fail to give notice of his decision as aforesaid or if the Contractor is dissatisfied with any such decision then, and in any such case, the Contractor may within 60 days after the expiration of the first named period of 60 days (as the case may be) require that the matter or matters in dispute be referred to arbitration. No such dispute not any delays occurring or resulting from reference to arbitration. No such dispute not any delays occurring or resulting from reference to arbitration or from arbitration procedures shall entitle the Contractor to make any claim for additional payment arising from the delays or otherwise".[1]

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(1) إذا نشا نزاع أيا كان نوعه بين الاستشارى أو المهندس المعمارى أو المالك من جهة والمقاول من جهة أخرى فيما يتعلق بالعقد أو نتيجة له أو نتيجة لتنفيذ الأعمال (سواء خلال سيرها، أو بعد إتمامها وأيضا سواء قبل أو بعد إنهاء العقد، أو تركه، أو الإخلال به) يحال النزاع أولا إلى المالك كتابيا من خلال الاستشارى، وعليه أن يرسل، خلال 60 يوما من مطالبته بذلك، إلى المقاول إخطارا كتابيا بقراره. وباستثناء ما ينص عليه العقد فيما بعد، يعتبر هذا القرار فيما يتعلق بأية مسألة محالة على هذا النحو، نهائيا وملزما للمقاول؛ وينفذه المقاول فى الحال ويستمر فى الأعمال مع بذل كل الجهد الواجب سواء اكان قد طلب اللجوء إلى التحكيم كما هو منصوص عليه فيما بعد، أم لا. وإذا أرسل

2."If the Contractor requests arbitration due to the dissatisfaction with the decisions of the Architect, Consultant or the Owner or if either party requests, arbitration for any reason, the said party shall refer the matter to a sole arbitration mutually agreed upon to arbitrage the dispute".[1]

3." If the Parties are unable to agree on the appointment of a sole arbitrator arbitrate the dispute within 14 days of either party giving notice of reference to arbitration under this Clause, each party shall within 14 days thereafter appoint an arbitrator and the two arbitrators shall agree upon a third arbitrator who shall serve as Chairman of the arbitration tribunal. If either party fails to appoint his arbitrator within 14 days from the date of the appointment of the second arbitrator, the second

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المالك إخطارا كتابيا من خلال الاستشارى بقراره إلى المقاول، ولم يتم تبليغ المالك منن خلال الاستشارى خلال فترة 60 يوما من تسلم هذا الإخطار، بطلب المقاول اللجوء إلى التحكيم، يظل ذلك القرار نهائيا وملزما للمالك والمقاول. وإذا لم يقم المالك بالإخطار بقراره كما هو مذكور أعلاه أو إذا لم يرض المقاول عن ذلك القرار، أو فى أى وضع من هذا القبيل، يجوز للمقاول خلال 60 بوما من انتهاء الفترة الأولى المذكورة ومنتها 60 يوما (بحسب الأحوال) أن يطلب إحالة المسألة أو المسائل محل النزاع، إلى التحكيم. ولن يعطى أى نزاع من هذا القبيل أو أى تأخير يحدث أو ينتج عن الإحالة للتحكيم أو عن إجراءات التحكيم، للمقاول فى أى حق للمطالبة بأى مبالغ أضافية تنشأ عن التأخير وخلافه.

(1) 2- إذا طلب المقاول التحكيم بسبب عدم الرضاء عن قرارات المهندس المعمارى أو الاستشارى أو المالك، أو إذا طلب أى من الطرفين اللجوء إلى التحكيم لأى سبب، يحيل ذلك الطرف المسألة إلى محكم واحد يتفق عليه الطرفان للفصل فى النزاع.

arbitrator and/or the Chairman, as the case may be, shall be appointed b the President of the Regional Center For International Commercial Arbitration in Cairo upon the request of either party. The Chairman thus appointed shall be of high reputation and wide experience in the construction business especially in the Middle East area and shall have no interest in or connection with either party. In the event of incapacity, death or resignation of an arbitrator, his replacement shall be appointed in the same manner".[1]

4. "Arbitration shall be held in Cairo and arbitration proceedings shall be conducted in the English language".[2]

5. "In conducting arbitration proceedings, the arbitration tribunal shall be guided by the Rules of

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(1) إذا لم يتفق الطرفان على تعيين محكم واحد للفصل فى النزاع خلال 14 يوما من تاريخ أخطار أحد الطرفين الطرف الآخر بالإحالة للتحكيم بموجب هذا الشرط، يعين كل طرف من الطرفين محكما، خلال 14 يوما بعد ذلك، ثم يتفق المحكمان على محكم ثالث يتولى رئاسة هيئة التحكيم. وإذا لم يتمكن أحد الطرفين من تعيين المحكم الخاص به خلال 14 يوما من تاريخ تعيين المحكم الثانى، يتم تعيين المحكم الثانى أو رئيس هيئة التحكيم، بحسب الأحوال، بواسطة رئيس المركز الإقليمى للتحكيم التجارى الدولى بالقاهرة بناء على طلب أى من الطرفين. ويجب أن يكون رئيس الهيئة المعين على هذا النحو متمتعاً بالسمعة الطيبة والخبرة العريضة فى مجال الإنشاء وبخاصة فى منطقة الشرق الأوسط وألا تكون له مصلحة أو علاقة مع أى من الطرفين أو فيما يتعلق بأى منهما. وفى حالة فقد أهلية أحد المحكمين أو وفاته أو استقالته، يتم تعيين المحكم البديل بنفس الطريقة.

(2) يعقد التحكيم بالقاهرة وتتم إجراءات التحكيم باللغة الانجليزية.

the Regional Center for International Commercial Arbitration in Cairo, Egypt".[1]

6. "The decision in respect to any matter made by the sole arbitrator or by a majority vote of the arbitration tribunal shall be final and binding upon the Owner and the Contractor and not subject to any appeal".[2]

- "The arbitration award may be entered in any court having jurisdiction and application may be made in such court for a judicial acceptance of the award or an order of .... thereof, as the case may be").[3]

Section Three
Arbitration Institutions

هيئات التحكيم

There are two types of arbitration, namely institutional and ad hoc arbitration. Institutional

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(1) تسترشد هيئة التحكيم فى إجراءات التحكيم بقواعد المركز الإقليمى للتحكيم التجارى الدولى بالقاهرة بمصر.

(2) يكون القرار، الذى يصدر فى أى مسألة من المحكم الواحد أو بأغلبية الأصوات فى هيئة التحكيم، نهائيا وملزما للمالك والمقاول وغير قابل للاستئناف.

(3) يجوز تسجيل قرار التحكيم فى أية محكمة مختصة قضائيا، ويجوز، بحسب الأحوال، التقدم بطلب إلى المحكمة نفسها للحصول على حكم منها بقبول القرار أو لاستصدار أمر بتنفيذه. وانظر محمود صبره، المرجع السابق.

arbitration means that parties choose the rules of a particular institution for arbitration.

There are many institutions of arbitration which provide facilities for settlement of disputes arising out of international contracts like:

- The court of arbitration established by the International Chamber of Commerce "the court of ICC".
- The court of arbitration established by convention on the settlement of investment disputes between states and nationals of other states. "The International Centre for settlement of investment disputes "ICSID".
- The court of American Arbitration Association "A.A.A.".
- The court of commercial arbitration commission "IACAC".
- The London court of International Arbitration "LCIA".[1]

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(1) هناك العديد من هيئات التحكيم الدولى التى تقدم تسهيلات لتسوية المنازعات التى تنشأ عن العقود مثل:

- محكمة تحكيم غرفة التجارة الدولية.
- محكمة تحكيم المركز الدولى لتسوية منازعات الاستثمار.
- محكمة تحكيم الجمعية الأمريكية للتحكيم .
- محكمة لندن للتحكيم.

1. The Court Of Arbitration Of The International Chamber Of Commerce.[1]

A. A Short Outline of the Historical and Operational Background of the Court of Arbitration:

التطور التاريخى لمحكمة تحكيم غرفة التجارة الدولية

More than seventy years ago, the International Chamber of Commerce established the ICC Court of Arbitration for the solution of disputes arising out of international economic contracts. The members of the Court are appointed by the Council of the International Chamber of Commerce. The function of the Court is to provide a means for settlement by arbitration of business disputes with an international character. The Court of Arbitration does not itself settle the dispute, but it appoints or confirms the nomination of arbitrators in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce[2].

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(1) See F. Eisenmann; Arbitrations under the international Chamber of Commerce rules, Int., Comp. Law quarterly, 15, 1966, P. 734.

(2) أنشئت محكمة تحكيم غرفة التجارة الدولية منذ ما يزيد على سبعين عاما لتسوية المنازعات التى تنشأ عن العقود الاقتصادية الدولية. حيث يسمى الأعضاء بلائحة المحكمين من قبل مجلس غرفة التجارة الدولية. ويخلص دور المحكمة فى تقديم وسائل تسوية تتسم بالسمة الدولية لمنازعات الاستثمار والتجارة، وهى لا تقوم بذلك بنفسها وإنما تعين أو تحدد المحكمين وفقا للوائح التحكيم المعمول بها لديها.

Nomination arbitrators: **تعيين المحكمين**

The parties to an arbitration proceeding are entitled to appoint a sole arbitrator if they agree on a particular person for confirmation by the Court of Arbitration. In the case of a tribunal consisting of three arbitrators, the parties are permitted to nominate one arbitrator for each side. The third arbitrator of the Chairman of the tribunal, will be the nominee of the Court of Arbitration. The Rules of Conciliation and Arbitration[1] describe in detail various aspects of the selection of the sole arbitrator and the members of a multi-member arbitral tribunal in the event of a request for a tribunal.[2]

Place of arbitration: **مكان التحكيم**

The contracting parties are free to select the place or country where the arbitration proceedings are to be conducted. It may be the state of which either party is a national or some third state. However, the Court of Arbitration is entitled to confirm or change the selection of any country as the place of arbitration,

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(1) The rules of 1998.

(2) وللأطراف تعيين محكم واحد للفصل فى النزاع، وقد يتفق على أن تتكون هيئة التحكيم من ثلاثة محكمين، يعين كل من الطرفين محكم بمعرفته على أن يعين الثالث رئيس محكمة التحكيم وفق القواعد المحددة بلائحة التحكيم والتوفيق.

unless the disputants agreed in advance upon the place of arbitration.[1]

B. Substantive Law of Arbitration and the Rules of the ICC Arbitration:

القانون الواجب التطبيق ولائحة تحكيم غرفة التجارة الدولية:

The article 17 of ICC rules established by the ICC 1998 specifies how the arbitrators are to resolve issues involving a question of choice of law. The parties are free to choose the applicable law, if they did not, the court of arbitration choose the applicable law in consider of the contract and the "Commercial usage". Further, the arbitrators are not free to apply ex aequo et bono in the capacity of amiables compositeurs in order to resolve this question, unless the parties have agreed that they may do so. In other words, whenever the question of choice of law arises, the arbitrators must resort to some rules of a legal system for the purpose of giving the award. The ICC rules do not provide any guideline for the arbitrators on how to select that particular legal system. However, the law of the place where the arbitration is

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(1) ولأطراف التحكيم حرية تحديد مكان انعقاد التحكيم. ولمحكمة التحكيم اقرار أو تغيير المكان الذى أختاره الأطراف إلا إذا أتفق الأطراف مقدما على عدم جواز ذلك.

held provides the law governing the procedure the arbitration on those points on which the Rules of the ICC are silent. Of course, this does not mean that the local substantive law will necessarily apply. But, no provision under the ICC rules prohibits the arbitrators from accepting the local law as the substantive law of arbitration.[1]

The selection of local substantive law of a third country other than that of the nation belongs to one of the parties in the arbitration may cause some legal problems. For instance, the legal system selected by the tribunal may not necessarily have any substantial connection with the international economic development contract In dispute. In this case, the tribunal would naturally dissatisfy both the private investor and the contracting state which do not want to

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(1) حددت المادة 17 من لائحة التحكيم الصادرة عن غرفة التجارة الدولية بباريس عام 1998 قواعد اختيار القانون الواجب التطبيق على موضوع النزاع حيث نصت على أنه:
"1- للأطراف حرية الاتفاق على القانون الذى يتوجب على محكمة التحكيم تطبيقه على موضوع النزاع، فإن لم يتفقوا على ذلك تطبق محكمة التحكيم القانون الذى تراه ملائما.
2 – فى كل الأحوال، تأخذ محكمة التحكيم بعين الاعتبار أحكام العقد والممارسات التجارية ذات الصلة.
3 – تقضى محكمة التحكيم كمحكم بالصلح أو "بالعدل والأنصاف" فقط إذا اتفق الأطراف على تفويضها بمثل هذه السلطة".
ومن ثم ففى كل الأحوال يجب على المحكمة الاستناد إلى بعض القواعد القانونية فى إصدار حكمها.
وإذا كان قانون مكان التحكيم يحكم بعض الإجراءات فى حالة عدم وجود اتفاق عليها، يمكن للمحكمة الرجوع إليه بشأن الموضوع.

apply the lex arbitri. To avoid this unfortunate occurrence, the tribunal could fill the gaps existing in the already selected local law, such as its "non-connection" with any of the aspects of the contract by accepting some relevant rules of the law of the contracting state party or of international law. However, this "process of filling up the gap" always depends on whether the rules of the local law permit the tribunal to do so. In other words, sometimes the tribunal may not be permitted under the local law to apply any outside legal rule other than that of the locl substantive law.

The lack of specific directives for the arbitrators on how to solve the question of choice of law problem among the ICC Rules on arbitration makes arbitration tribunals sponsored by the Court of Arbitration inappropriate to handle legal disputes arising out of TEDCs. This is so because there is no guarantee to the disputants with respect to the application of whether the law of the contracting state or rules of international law will be applied whenever gaps or conflicts appears among the rules of the law already applied by the tribunal for resolving a legal dispute.

2. The International Center For Settlement of Investment Disputes "ICSID"[(1)]

A. The Development of the ICSID-Historical Perspective:

التطور التاريخى لإنشاء المركز الدولى لتسوية منازعات الاستثمار:

The International Center for Settlement of Investment Disputes (ICSID) was established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States sponsored by the World Bank (The International Bank for Reconstruction and Development) in March 1965. The Convention came into force on October 14, 1966, thirty days after the deposit of the twentieth instrument of ratification[(2)].

The establishment of the Center responded to the perceived unavailability of adequate machinery for international conciliation and arbitration. This

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(1) See J. Cherian: Investment contracts and arbitration, 1975, A.W. Sijthoff, P. 65 SS. And World Bank IDA, Annual report 1973, E. Tindoll: International Commercial Arbitration, American Business Law Journal 7, 1969, P. 70.

(2) أنشئ المركز الدولى لتسوية منازعات الاستثمار باتفاقية تسوية منازعات الاستثمار بين الدول ومواطنى الدول الأخرى التى أعدها البنك الدولى للتعمير والتنمية فى مارس 1965، ودخلت حيز النفاذ فى 14 أكتوبر 1966 بعد ثلاثين يوما من إيداع وثائق التصديق من عشرين دولة.

deficiency often frustrated attempts to agree on an appropriate mode for the settlement of investment disputes between sovereign governments and private foreign investors. Tribunals set up by private organizations such as the American Arbitration Association, the Inter-American Commercial Arbitration Commission and the International Chamber of Commerce were frequently unacceptable to governments. Furthermore, the only existing public international arbitral tribunal, the Permanent Court of Arbitration, was not open to private investors.(1)

This particular situation was considered by the Economic and Social Council of the United Nations; but the U.N. has not contributed anything other than a General Assembly resolution which requested the U.N. Secretariat to continue its work in cooperation with the World Bank to provide facilities for achieving an effective and satisfactory method of

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(1) وقد جاء أنشاء هذا المركز ليسد ثغرة عدم وجود وسيلة مناسبة للتوفيق والتحكيم. الأمر الذى كان يعيق الاتفاق على وسيلة لتسوية منازعات الاستثمار التى تقع بين دولة ذات سيادة ومستثمر خاص أجنبى. ذلك أن المحاكم التى أنشئتها الهيئات ذات الطبيعة الخاصة مثل محكمة تحكيم الجمعية الأمريكية للتحكيم (A.A.A) ولجنة التحكيم التجارى بين الدول الأمريكية (I.A.CAC) ومحكمة تحكيم غرفة التجارة الدولية ICC ، مثل هذه المحاكم عادة ما كانت الدول والحكومات ترفض التقاضى أمامها، كما أن محكمة التحكيم الوحيدة ذات الطبيعة الدولية، نقصد المحكمة الدائمة للتحكيم، لا تختص بمنازعات الأفراد وأشخاص القانون الخاص.

settling foreign investor-capital-importing disputes.

At its 1962 annual meeting, the Bank's Board of Governors adopted a resolution requesting the Executive Directors to study the possibility of the establishment of a forum of arbitration to settle investment disputes between host governments and foreign investors. As a result of this resolution, the World Bank initiated the Convention of 1965 with the objective of encouraging a larger flow of private investment for the purpose of accelerating economic development of developing countries by resolving legal disputes arising out of foreign investment programs between the capital-exporting foreign national and the receiving host states[1].

The arbitral tribunals of the ICSID can resolve the questions of choice of law with the help of the power given to such tribunals under Article 42. The

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(1) وفى ظل هذه الظروف التى لاحظها المجلس الاقتصادى والاجتماعى التابع للأمم المتحدة، أصدرت الجمعية العامة للأمم المتحدة توصية طالبت فيها الأمين العام للأمم المتحدة بمتابعة مساعيه بالتعاون مع البنك الدولى للتعمير لتقديم تسهيلات للتوصل إلى وسيلة كافية وفعالة لتسوية منازعات الاستثمار والتمويل والتصدير.
وبناء عليه فقد اصدر مجلس محافظى البنك فى اجتماعه السنوى عام 1962 توصية يطلب فيها مع المجلس التنفيذى للبنك دراسة إمكانية إقامة هيئة تحكيم تختص بتسوية منازعات الاستثمار بين الدول والحكومات وأشخاص القانون الخاص، وهو ما أثمر عن أعداد الاتفاقية عام 1965 بهدف تشجيع انتقال الاستثمار للدول النامية لتسريع عجلة التنمية، بحل المشاكل القانونية التى تعوق ذلك.

way in which such a power can be exercised will best be understood if some outline is given of the way in which the ICSID is administrated and its tribunal established, as well as the way that functions are entrusted to its tribunals[1].

B. The Operation of the ICSID and its Arbitral Tribunals[2]

نشاط المركز الدولى لتسوية منازعات الاستثمار

1. Jurisdiction of the ICSID:

اختصاص المركز الدولى لتسوية منازعات الاستثمار:

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(1) ويلاحظ أن لهذه المحكمة سلطة تحديد القانون الواجب التطبيق من خلال تطبيق نص المادة 42 من اتفاقية انشاءها، وهو ما يمكن أن يفهم من خلال دراسة آليات عمل هذه المحكمة.

(2) The Organs of the ICSID and their Major Functions:
أجهزة المركز الدولى لتسوية منازعات الاستثمار ووظائفها:

The major organs of the ICSID are the Administrative Council and the Secretariat. The Administrative Council is composed of one representative of each Contracting State. The president of the World Bank will serve ex officio as the Chairman of the Council, but has no power to vote.

The Secretariat consists of a Secretary-General, one or more Deputy Secretaries-General, and their staffs. Article 10, which requires that the Secretary-General and any deputy Secretary-General be elected by the Administrative Council with a majority of two-thirds of its members on the nomination of the Chairman, limits their term of office to a period not exceeding six years and permits re-election. The SID Convention requires the Secretary-General to perform various administrative functions such as legal representative, registrar and principal officer of the ICSID.

The ICSID can extend its jurisdiction to any legal dispute arising directly out of an investment between a Contracting State or any agency of that Contracting State and a natural person or juridical person belonging to another Contracting State. Consent of the parties is the cornerstone of the jurisdiction of the Center. Consent to jurisdiction must be in writing and once given cannot be withdrawn unilaterally. "Consent" may be given, for example, in an arbitration clause included in a transnational economic development contract (TEDC), providing for the submission to the Center of future legal dispute arising out of that agreement or in a compromis regarding a legal dispute which has already arisen, A capital-receiving state may in its investment promotion legislation offer to submit a legal dispute arising out of certain classes of investments to the jurisdiction of the Center, and the investor may give his consent by accepting the offer in writing. Moreover, the right of a foreign investor to submit a claim to the Center depends upon the condition that his national state and the disputing state already have

signed the SID Convention[1].

2. Nature of the dispute: **طبيعة النزاع**

The reference to a legal dispute in Article 25 limits jurisdiction in one important regard. Referring to this aspect of the provision, the Executive Directors of the World Bank have commented that the expression 'legal dispute' had been used to make clear that while conflicts of rights were within the jurisdiction of the Center, mere conflicts of interests were not. The dispute must concern the existence or scope of legal right or obligation, or the nature or extent of the reparation to be made for breach of a

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(1) Article 25 of ICSID convention.

حيث بينت أن اختصاص المركز الدولى لتسوية منازعات الاستثمار يمتد لنظر كل نزاع ينشأ مباشرة عن تبادل الاستثمار بين أحدى الدول الموقعة على اتفاقية انشاء المركز، أو أحدى الهيئات التابعة لها، وأحد أشخاص القانون الخاص من تابعى دولة أخرى من الدول الموقعة على الاتفاقية.

ويلاحظ أن رضا الأطراف هو حجر الزاوية فى اختصاص المركز، وأن الرضا بالاختصاص يجب أن يعبر عنه بالكتابة ، وأنه إذا ما عبر عن الرضا بالاختصاص فلا يمكن لأى من الأطراف سحب الرضا بالإرادة المنفردة.

وقد يظهر التعبير عن الرضا فى صورة شرط تحكيم ينص فيه على قبول اخضاع المنازعات القانونية المستقبلية لاختصاص المركز الدولى لتسوية منازعات الاستثمار ، كما يمكن أن يتم اظهار الرضا باختصاص المركز فى نصوص قوانين تشجيع الاستثمار التى تصدرها الدولة التى يتم الاستثمار فيها، فيقبل المستثمر الخاص هذا الاختصاص كتابة.

ويلاحظ أخيرا أن قبول المستثمر الخاص لاختصاص المركز يظل مشروطا بتوقيع كل من الدولة التى يتبعها والدولة التى يستثمر فيها للاتفاقية المنشئة له . (المادة 4/25 من اتفاقية انشاء المركز).

legal obligation[1].

3. Arbitration Tribunals Under the ICSID

محاكم تحكيم المركز الدولى لتسوية منازعات الاستثمار

a. Panels of arbitrators: **قوائم المحكمين**

Article 3 requires the ICSID to maintain a Panel of Conciliation and a Panel of Arbitrators, and Article 14 (1) seeks to insure that Panel members will possess a high degree of competence and be capable of exercising independent judgment. However, the Convention permits parties in a dispute to appoint arbitrators from outside the Panels but requires that such appointees possess the qualities described under-Article 14(1).[2]

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(1) انظر المادة 25 من اتفاقية إنشاء المركز التى أشارت إلى قصر اختصاصه على المنازعات القانونية. وهو ما علق عليه المجلس التنفيذى للبنك الدولى بأن استخدام عبارة "المنازعات القانونية" جاء ليوضح طبيعة النزاع الذى يخضع للاختصاص التحكيمى للمركز، إذ يجب أن يكون نزاع حول حق أو التزام، ومن ثم فلا يدخل فى اختصاص المركز الفصل فى تنازع المصالح، بمعنى أنه يجب أن يتعلق الاختصاص بوجود أو نطاق حق أو التزام من الحقوق والالتزامات التى ينظمها القانون، أو يتعلق بطبيعة أو قدر التعويض عن مخالفة التزام من هذه الالتزامات.
لمزيد من التفصيلات انظر: Cherain: Op. Cit., P. 70.

(2) "Persons designated to serve on the Panels shall be person of high moral character and recognized competence in the field of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators".

As the wording of Article 14 (1) indicates, there is no absolute requirement that arbitrators be trained in the law. This point raises serious doubt as to how non-legal experts appointed by the parties or the Chairman of the Administrative Council as arbitrators will interpret and apply rules of law in an international arbitration which is a judicial method of settling legal disputes(1).

b. Formation of the Arbitral Tribunal:

تكوين محكمة التحكيم

After receiving a written request from any Contracting State or any national of a Contracting State wishing to institute an arbitration proceeding, the

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(1) However, the assurance under Article 14 (2) that the Chairman will pay due regard to the importance of the representation of principal legal systems of the world provides some kind of assurance to lawyers who may question the required qualifications of the arbitrators. But this assurance applies only to appointments of arbitrators by the Chairman, not by the disputing parties.

تلزم المادة /3 من الاتفاقية المركز الدولى لتسوبة منازعات الاستثمار بالاحتفاظ بقائمة للمحكمين وقائمة للمستشارين، وتتطلب المادة 1/14 من الاتفاقية المذكورة التأكد من أن الأعضاء بالقائمة على درجة عالية من التخصص والقدرة على العمل كقاضى مستقل. ومع ذلك فلأطراف النزاع اختيار المحكمين من خارج القائمة المشار إليها على أن يلتزموا عند الاختيار بالشروط التى يجب توافرها فى المحكم. وحسب نص المادة 1/14 من الاتفاقية فلا يشترط فى المحكم الذى يتم اختياره ضمن القائمة أن يكون متخصصا فى القانون، وهو الأمر الذى يثير التساؤلات عن الكيفية التى يمكن بها لغير متخصص فى القانون تفسير وتطبيق النصوص القانونية فى تحكيم دولى هو وسيلة قضائية لتسوية المنازعات القانونية.

arbitral tribunal must be formed as soon as possible[1]. The tribunal may consist of a sole arbitrator or any uneven number of arbitrators. In the absence of an agreement between the parties on the number of arbitrators, the tribunal will consist of three arbitrators, one arbitrator appointed by each party, and the President of the tribunal by the common agreement of the parties[2]. If the tribunal is not constituted within 90 days after the registration of the written request, the Chairman of the ICSID Administrative Council will appoint either the sole arbitrator or all arbitrators of the tribunal after consulting with the disputing parties[3]. Unlike the nominees agreed to by the parties, these nominees of the Chairman must be nationals of countries other than those of parties[4].

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(1) المواد 1/36 و 37 من اتفاقية إنشاء المركز.

(2) بتلقى طلب كتابى لبدء إجراءات التحكيم من أحدى الدول الموقعة على الاتفاقية أو من أحدى الهيئات أو من أحد تابعيها لبدء تشكيل محكمة التحكيم. انظر المادة 37 من اتفاقية إنشاء المركز.

(3) وتتكون المحكمة من محكم واحد أو عدد فردى من المحكمين الذين يعينون باتفاق الطرفين، وفى حالة عدم الاتفاق على تحديد عدد المحكمين تتشكل المحكمة من ثلاثة محكمين يقوم كل طرف بتعيين محكم واحد أما المحكم الثالث وهو رئيس المحكمة فيتم تعيينه بموافقة الطرفين. انظر المادة 2/37 – ب من اتفاقية إنشاء المركز.

(4) إذا لم يتم تكوين المحكمة خلال 90 يوما من تاريخ الاخطار بتسجيل الدعوى يقوم رئيس المجلس الإدارى للمركز وبعد التشاور مع الطرفين بتعيين المحكم أو المحكمين. ولا يجوز للمحكمين المعينين من قبل الرئيس أن يكونوا من بين رعايا الدولة المتعاقدة التى

c. Powers and Function of the Tribunal:

سلطات المحكمـة

Before acting on an arbitration, all the members of the tribunal must sign a declaration that they will judge the dispute fairly according to the applicable law[1]. The tribunal is the judge of its competence[2] and is empowered to make rulings as to the extent of its own jurisdiction. As early as possible, after the tribunal has been constituted the President and members of the tribunal have to endeavor to ascertain the views of the parties regarding questions of procedure, including the quorum of the tribunal at its hearing, the usage of the language of the proceedings, matters relating to oral and written procedure, and the cost of the proceedings[3]. This rule enables the tribunal to create an atmosphere of cooperation with disputants and a concrete procedural framework. This preliminary procedural consultation of the tribunal with the parties may help the parties reach some

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تشكل طرفا فى النزاع أو أن يكونوا من الدول المتعاقدة التى يكون أحد رعاياها طرفا فى النزاع. انظر المادة 38 من الاتفاقية.

(1) Rule 6 on the constitution of the tribunal see hereinafter anxx 8.

(2) Article 41/1 SID convention.

(3) ICSID regulations and reules, Rule 20 on preliminary proceudural consultion, See hereinafter, Anixx 7.

understanding on issues involved with the taking of evidence, the admissibility of counter claims, the determination of the law that the tribunal is to apply and its power to decide the dispute ex aequo et bono if the parties agree(1).

4. Applicable law of ICSID arbitration:

القانون الواجب التطبيق لدى تحكيم المركز الدولى لتسوية منازعات الاستثمار.

A crucial question in any arbitration is the choice of law(2). Article 42 of the SID Convention resolves this problem by establishing certain specific directives to the arbitral tribunal as follows:

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(1) يوقع المحكمين إقرار بالحكم فى النزاع حكما عادلاً وفقا للقانون الواجب التطبيق قبل بدء إجراءات التحكيم. حيث تبدأ المحكمة بالفصل فى اختصاصها عملا بالمادة 1/41 من اتفاقية إنشاء المركز. وبمجرد أن تقرر أنها مختصة تبدأ المحكمة فى محاولة التحقق من وجهات نظر أو طلبات أطراف التحكيم بالنسبة للإجراءات بما فى ذلك النصاب القانونى "quorum" لانعقاد المحكمة فى جلسات الاستماع واللغة المستخدمة فى الإجراءات، والمسائل التى يجوز فيها المرافعات الكتابية والشفوية، وتكلفة التحكيم، الأمر الذى يمكن المحكمة من إيجاد مناخ من التعاون بينها وبين أطراف النزاع، وهو ما قد يؤدى إلى التوصل إلى التفاهم على مسائل الإثبات وسلطة المحكمة فى القضاء بمبادئ العدل والإنصاف.

(2) CF. Cherian: Op. Cit., P. 74, P.C. Szasz: The investment disputes convention- opportunities and pitfalls, the Journal of law and Economic development, VOl, I, 1970, P. 38.

See Olso G.R. Delaun; Convention on the settlement of inventment disputes between states and national of other states, Int. Lawyer, Vol. I. No I. (Oct. 1966) P. 77.

ولمزيد من التفاصيل انظر مؤلفنا دور أحكام التحكيم فى تطوير حلول اختيار القانون الواجب التطبيق ، دار الفكر الجامعى ، 2004.

1. The tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) as may be applicable.

2. The tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.

3. The provision of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo to bono* if the parties so agree.[1]

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(1) الصعوبات التى تواجه المحكمين مسألة اختيار القانون الواجب التطبيق، إلا أن اتفاقية إنشاء المركز الدولى لتسوية منازعات الاستثمار عملت على تذليل هذه الصعوبة بوضع نص المادة 1/42 التى تنص على أن :

1 - "تفصل المحكمة فى النزاع طبقا للنظم القانونية التى وافقت عليها الأطراف المتنازعة فإذا لم يتفق الطرفان تقوم المحكمة بتطبيق قانون الدولة المتعاقدة لأطراف النزاع (بما فى ذلك القواعد الخاصة بتنازع القوانين) وكذلك مبادئ القانون الدولى الواجب تطبيقها فى هذا الصدد.

2 – ليس للمحكمة أن تحكم بعدم اختصاصها على أساس سكوت أو غموض القانون.

3 – لا تمس نصوص الفقرات السابقة قدرة المحكمة على الفصل بالعدل وإلا نصاف وهذا فى حالة موافقة الطرفين.

Annexes

1. **Annex One:** Legal Terminology.
2. **Annex Two:** Examples for international contracts.
3. **Annex Three**: United Nations convention on contracts for the international sale of goods.
4. **Annex Four:** Undroit Principles for international commercial contracts

5. **Annex Five:**

اتفاقية واشنطن لعام 1965 الخاصة بتسوية المنازعات الناشئة عن الاستثمار بين الدول ورعايا دول أخرى.

6. **Annex Six :** ACSID Administrative and Financial regulations.
7. **Annex Seven:** ACSID rules of procedure for the institution of conciliation and arbitration proceedings (Institution rules).
8. **Annex Eight:** Rules of Procedure for Conciliation Proceedings (Conciliation rules).
9. **Annex Nine:** ACSID rules of procedure for arbitration proceedings (Arbitration rules).



Annex One
Legal Terminology
المصطلحات القانونية المستخدمة فى مسائل العقود الدولية

1. Legal terminology in formation of contract.

مصطلحات قانونية فى إبرام العقد.

Obligation — الالتزام

Oblige — الملتزم

Obligor — الملزم

Oppressive agreements — الشروط التعسفية

An act or a forbearance from an act

الالتزام بعمل أو بالامتناع عن عمل

An obligation to do or to refrain from doing

التزام بعمل أو بامتناع عن عمل

An obligation of giving — الالتزام باعطاء

Legally enforceable obligations

التزامات قابلة للتنفيذ قانونا

Non contractual obligations — الالتزامات غير التعاقدية

Civil obligations — التزامات مدنية

Moral duties — واجبات أخلاقية

Principle of autonomy of volitions

مبدأ سلطان الإرادة (فى العقود)

Contractual rights obligations الحقوق والالتزامات التعاقدية

Contractual capacity الأهلية للتعاقد

Incapacity انعدام الأهلية

Spendthrift سفيه

Imbecile ذو غفلـه

Prodigal المبـذر

The legal or natural incapacity

انعدام الأهلية القانونية أو الطبيعية

There is no real assent if the person who gives it lacks capacity لا يوجد رضا حقيقى إذا كان الشخص تعوزه الأهلية

Fırs offer العرض الأول

Final offer العرض الأخير

Offer and acceptance الإيجاب والقبول

A counter - offer ايجاب مضاد "أو ايجاب جديد"

Offeror and offeree

صاحب الإيجاب ومن يوجه إليه الإيجاب

An invitation to treat الدعوى لتقديم عروض

The main contractor المتعاقد الأصلى

The sub-contractor المتعاقد من الباطن

Geniuses of assent مصداقية التراضى

The subject of contract	موضوع العقد
Contractual	تعاقدى
Quasi contractual	شبه تعاقدى
Discharge of contract	تنفيذ العقد
An oral contract	عقد شفهى
A contract in writing	عقد مكتوب[1]
An agent	الوكيل
The unauthorized agent	الوكيل غير المصرح له.
The undisclosed principal	الأصيل الخفى[2]
Consensus and idem	نية التعاقد
A promise	وعـد
Promissory	مقدم الوعد
Promise	الموعود
A bilateral contract	عقد ملزم للطرفين
A multilateral contract	عقد متعدد الأطراف

Owing to the binding force of a contract, every party should……

بسبب القوة الملزمة للعقد، يجب على كل طرف ....

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(1) فى العقود يجب أن يكون الرضا صحيحا غير معيب وإلا صار باطلا أو قابلا للإبطال.

(2) ومثال أن يبرم شخص عقدا باسمه، ولكن – فى الحقيقة – لصالح أصيل لم يصرح به: كأن يحجز "أ" تذكرة باسمه لحضور عرض مسرحى فى مسرح أصدر قرارا بمنع "ب" من حضور عروضه، ويعطى الأول التذكرة إلى الثانى ليحضر فى المسرح.

An adhesion contract[1]

2.Legal terminology in applicable law and jurisdiction[2]:

مصطلحات قانونية فى القانون الواجب التطبيق والاختصاص القضائى فى مسائل العقود:

Conflict of laws	تنازع القوانين
Choice of law	اختيار القانون
A foreign element	عنصر أجنبى
The jurisdiction of the court	ولاية (اختصاص) المحكمة
The foreign country	البلد الأجنبى
The foreign law	القانون الأجنبى

Forum conveniens (convenient court)

المحكمة المختصة (بنظر النزاع)

Lex causa: the law applicable (or to be applied) to the case.

القانون القابل للتطبيق (الواجب التطبيق) على القضية

Lex fori: the law of the place where the court exists.

قانون المكان (قانون مكان المحكمة)

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(1) عقد الإذعان هو ذلك العقد الذى يتعلق فيه القبول بشروط يحددها صاحب الإيجاب والتى لا تخضع لأى نقاش.

Is that in which acceptance is related to conditions which are drawn up by the offer or and which are not subject to discussion.

(2) بتصرف See Abo Al Waffa: Op. Cit., P. 188.

Lex domicile: the law of the country where a person is domiciled.

قانون موطن الشخص

Lex loic actus: the law of the place of the act in question.

قانون مكان الفعل أو العمل المعنى

Lex loci contracutus: the law of the place where the contract is concluded

قانون مكان إبرام العقد

Lex actus: the law of the country with which the act is most closely connected

قانون التصرف أو الفعل (وهو المكان الذى يرتبط به أكثر).

Lex situs: the law of the place in which the property is situated.

قانون المكان (مكان وجود المال أو الملكية)

Classification or characterisation of the cause of action

تكييف المسألة محل الدعوى[1].

The identification of the applicable law by means of what is called a connecting factor or point of contact.
تمييز القانون واجب التطبيق عن طريق ما يسمى بقاعدة الإسناد أو

(1) فى القانون الدولى الخاص يلعب التكييف دورا هاما فى تحديد المسألة قيد البحث، وبالتالى القانون واجب التطبيق عليها. انظر مؤلفنا تنازع القوانين، ط 2006، ص .

	ضابط الإسناد[1].
Renvoi	الإحالة[2]

3. Legal terminology in termination of contract and liability[3]

Licensing contract	عقد الترخيص
Franchising contract	عقد الامتياز التجارى
Exclusive	استئثارى
Concession agreement	اتفاق الامتياز
Exploitation contract	عقد الاستغلال
Economic development agreement (EDA)	عقد التنمية الاقتصادية
Transnational commercial contracts	العقود التجارية الدولية

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(1) Examples of connecting factors: 1- In general formalities of marriage are gouverned by the lex loci celebrationis; 2- Rights over immouvables are gouverned by the lex situs.
أمثلة على قواعد الإسناد: 1- بصفة عامة ، يحكم شكليات الزواج قانون مكان الاحتفال به؛ 2 – يحكم الحقوق على العقارات قانون المكان.

(2) فى القانون الدولى الخاص قد يكون القانون الأجنبى الذى سيطبقه القاضى هو نفسه يشير إلى قانون آخر أى يحيل إليه. مثال ذلك أن تقرر قاعدة الإسناد تطبيق قانون الموطن، فإذا رجعنا إلى هذا الأخير نجده يشير إلى أن المسألة يحكمها قانون جنسية الشخص).
انظر فكرة الإحالة فى مؤلفنا تنازع القوانين، السالف الذكر، ص .

(3) بتصرف انظر الدكتور احمد أبو الوفا، المرجع السابق، ص 140 ومابعدها.

Technical assistance عقد المساعدة الفنية

Civil wrong الخطأ المدنى

Civil responsibility المسئولية المدنية

The breaking of a contract leads to a legal sanction

يؤدى انتهاك العقد إلى توقيع جزاء قانونى

A fundmental breach of contract

خرق جوهرى للعقد

Wrongful acts – the wrongdoer

التصرفات الخاطئة – مرتكب الفعل الخطأ (أو المخالف للقانون)

Tortious liability المسئولية عن الفعل الضار

Laibility for damage caused by things

المسئولية عن الضرر الذى تسببه الأشياء

An obligation to honor the contract

الالتزام بالوفاء بالعقد

An obligation to compensate for breach of a contract

الالتزام بالتعويض عن خرق العقد

Full, substantial or deficient performance of a contract

الانجاز الكامل أو الجوهرى أو الناقص للعقد

A contract – breaker

منتهك العقد

Vicarious	نائب عن الغير
Vicarious liability	المسئولية عن فعل الغير
A tortuous act	الفعل الضار
A tortfeasor	مرتكب الفعل الضار
Law of tort	المسئولية التقصيرية
Joint and several liability	مسئولية مشتركة وتضامنية

Unlawful act (act against law), damage, causal relation and intent to do the act or negligence are, in general, the conditions of tortuous liability

الفعل غير المشروع (المخالف للقانون)، والضرر، وعلاقة السببية، وقصد ارتكاب الفعل أو الإهمال (القصور) هى من شروط المسئولية عن الأفعال الضارة.

The causality relation between the fault and the claimed damage

علاقة السببية بين الخطأ والضرر المدعى به

The plaintiff used the defendant for breach of a contract

يقيم المدعى دعوى ضد المدعى عليه لانتهاكه العقد

Mistakes may be of fact, of law, as to identity, as to quality and as to substance

الأخطاء قد تكون: بالنسبة، للواقع أو القانون أو بالنسبة لهوية المتعاقد، أو فى الجودة أو الموضوع.

The rule of assumption of risk — قاعدة افتراض المخاطر

Unjust enrichment — الإثراء بلا سبب[1]

The creditor – the debtor — الدائن – المدين

Monetary compensation — التعويض المالى

The plaintiff is entitled to damages for breach of contract, i.e., the defendant is liable in damages.

من حق المدعى الحصول على تعويض بسبب خرق العقد، أى أن المدعى عليه مسئول عن التعويض.

The aggrieved party (The injured party) — الطرف المضار

Damage at large — تعويض كامل

Nominal damage — تعويض رمزى

Liquidated damages — تعويضات قدرها الأطراف مسبقا

Unliquidated damages — تعويضات يترك تقديرها لسلطة المحكمة

The reasonable foresight is a criterion of negligence or breach of law.

التوقع المعقول هو معيار الإهمال أو خرق القانون.

The plaintiff must prove that the defendant acted, or omitted to act, negligently.

يجب على المدعى أن يثبت أن المدعى عليه تصرف أو أمتنع عن التصرف بإهمال.

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(1) وهو مصدر من مصادر الالتزام، ويفترض عدم وجود اتفاق وإلا كان بسبب.

Defences against liability may be: volonti non fit injuria, exclusion of liability and illegality (public policy) and contributory negligence.

أن وسـائل الـدفاع ضـد المـسئولية ،هـى: مبـدأ أن الموافقـة لا تحـدث ضررا، واستبعاد المسئولية وعدم المشروعية (النظام العام)، والإهمـال المشترك[1].

The reasonable man, the average standard, the standard of care, foresee ability and special care are criteria for the assessment of damages.

معـايير تقـدير التعـويض هـى: معيـار الرجـل المعتـاد، ومعيـار الرجـل المتوسط ، ودرجة الحيطة، والقابلية للتوقع، والمهارة الخاصة.

The application of foresee ability and special care, may be through: the likelihood of the occurrence of injury, the gravity of the injury which may be suffered and the cost and practicability of measures necessary to overcome the risk.

يمكن أن يتم تطبيق معيـار التوقـع والحيطـة مـن خـلال: احتمـال وقـوع الـضرر، وجـسامة الـضرر الـذى قـد يقـع، وتكلفـة وإمكانيـة اتخـاذ الإجراءات الضرورية لتجنب الضرر.

The penal clause **الشرط الجزائى**

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[1] (ومثاله: أن يموت شخص نتيجة خطئه وخطأ شخص آخر. فى هذه الحالة يتم تخفيض مبلغ التعويض الواجب دفعه).

In a contract, a contracting party has two alternatives: either to carry out the contract, or to pay compensation

فى العقد يكون للطرف المتعاقد أحد بديلين: أما تنفيذ العقد، أو دفع تعويض

The legal cause (or ground)

السبب القانونى فى العقد[1]

Voidable contracts — العقود القابلة للإبطال[2]

Valid contracts — العقود الصحيحة[3]

This reason may not vitiate (invalidate) the contract

هذا السبب لا يمكن أن يبطل العقد

To nullify a contract — يبطل عقدا

Void (null) contracts — العقود الباطلة

Rescission of a contract — فسخ العقد

Contracts contrary to good morals

عقود مخالفة للآداب العامة

The intention of the parties is established objectivity

تثبت نية الأطراف بطريقة موضوعية

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(1) ويتمثل أساسا فى نية الأطراف المتعاقدة خلق حقوق والتزامات.

(2) وهى عقود يمكن أن تكون نافذة، إلا أنه ينقصها أحد شروط الصحة، ويمكن إبطالها بناء على طلب طرف أو أكثر فى العقد، فهى إذن صحيحة حتى يتم إبطالها. مثال ذلك العقود المبرمة تحت تأثير الغلط.

(3) وهى التى تتوافر فيها كافة شروط صحتها وتكون ملزمة لأطرافها.

The presumed intention of the parties

النية المفترضة للأطراف

A term will not be implied contrary to an express term

لا يمكن الأخذ ضمنا بلفظ يتعارض مع لفظ صريح

The aggrieved party is entitled to ....

الطرف المضار من حقه أن ....

Exclusion clauses of responsibility

الأسباب المستبعدة للمسئولية

Impossibility of the performance of the contract

استحالة تنفيذ العقد

The defrauded party الطرف الذى وقع عليه الغش

Contrat may be vitiated by mistake misrepresentation, coercion or fraud

يمكن أن يكون العقد معيبا للغلط أو التدليس أو الإكراه أو الغش

To enter into a fresh contrat يبرم عقدا جديدا

Mistake as to the identity of the party

الغلط فى شخص الطرف فى العقد

The contrat has been entered into as a result of a coercion of will which has vitiated consent.

تم إبرام العقد نتيجة لإكراه للإرادة عاب العقد

There must be a free and independent will when entering into the contrat

يجب توافر إرادة حرة ومستقلة عند إبرام العقد

Severance — فصل الشرط [1].

Damage — الضرر (المتمثل فى الخسارة مثلا)

Damages — التعويضات أو مبلغ التعويض

The concept of foresseability — مبدأ القابلية للتوقع[2]

Novation — تجديد (تجديد العقد باتفاق بين أطرافه)

He acted in good faith (or in bad faith).

تصرف بحسن نية (أو بسوء نية)

Defeasance clause of a contract — شرط فاسخ للعقد

To frustrate a contract

يحبط العقد (يجعل العقد مستحيل التنفيذ نتيجة لقوة قاهرة)

Offer of amends — عرض بدفع التعويض

A contingent condition — شرط واقف

An implied condition — شرط ضمنى

An express condition — شرط صريح

A condition subsequent — شرط فاسخ

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(1) قد يوجد شرط باطل فى العقد، وبقيته صحيح، فيبطل الشرط ويبقى العقد، أى أنه يتم فصل الأشياء القابلة للانفصال. وهذا قريب من فكرة تفريق الصفقة لدى فقهاء المسلمين.

(2) وهو مبدأ مطبق فى مواضيع كثيرة، منها أن من ينتهك العقد يتوقع النتائج المترتبة على ذلك.

To rescind a contract for misrepresentation

يفسخ العقد بسبب التدليس

The misrepresented — الشخص الواقع عليه التدليس

The misreprsentator — الشخص الذى قام بالتدليس

Gap filling (of a contract) by interpretation

سد النقص (فى العقد)[1] عن طريق التفسير

The law of contract compensates a plaintiff for damages resulting from the defendant's breach; it does not compensate him for damages resulting from his making a bad bargain.

يعوض قانون العقد المدعى عن الأضرار الناجمة عن انتهاك المدعى عليه؛ لكنه لا يعوضه عن الأضرار الناجمة عن إبرامه لصفقة خاسرة.

The general principle for the assessment of damages is that the interested party is to be placed, in the same position's if the contract had been performed.

يتمثل المبدأ العام بالنسبة لتقدير التعويض فى أن الطرف المعنى يجب وضعه فى نفس الوضع الذى كان سيوجد فيه لو تم تنفيذ العقد.

A contract may be renegotiated in order to adjust its terms to the prevailing circumstances.

يمكن إعادة التفاوض على العقد لجعل نصوصه متلائمة مع الأحوال

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(1) يكون ذلك مثلا إذا وجد نقص فى العقد بخصوص سعر السلعة، فتحاول المحكمة سده عن طريق الاستهداء بسلوك أطرافه، أو استنادا إلى اتفاق شفهى بينهما ...الخ.

السائدة[1]

Not all illegal contracts are equally illegal

ليست كل العقود غير المشروعة متساوية فى عدم المشروعية

In general, the illegal contract is not enforceable

كقاعدة عامة ، العقد غير المشروع يكون غير قابل للتنفيذ

The parties are equally at fault

الأطراف مخطئون بنفس القدر

The judge may annual a contract entered into as a result of a party exploiting the obvious levity of character or the unbridled passion of the other party.

يمكن للقاضى أن يبطل العقد المبرم نتيجة لاستغلال الطيش البين أو الهوى الجامح لدى الطرف الآخر.

4. Legal terminology in ICC arbitration:

The court of Arbitration	محكمة التحكيم
A request of arbitration	طلب التحكيم
The International chamber of commerce court of Arbitration "ICC"	محكمة تحكيم غرفة التجارة الدولية
The institution of arbitration proceedings	افتتاح إجراءات التحكيم

(1) يكون ذلك – خصوصا – إذا كان العقد ممتدا لفترة طويلة، تتغير فيها الأحوال خلال تنفيذه تغييرا جوهريا، يرهق بشدة أحد أطرافه. ويكون ذلك – عادة – عن طريق إدراج نص فى العقد يقضى بإمكانية ذلك.

International economic problems	المـــــشكلات و المنازعـــــات الاقتصادية الدولية
The members of the court	اعضاء المحكمة
Sole arbitrator	محكم وحيد
Chairman of the tribunal	رئيس المحكمة
Rules of conciliation and arbitration	لائحة التوفيق والتحكيم
The contracting parties	الأطراف المتعاقدون
Substantive law	القانون الموضوعى
Articles	مواد
Question of choice of law?	مشكلة اختيـار القـانون الواجـب التطبيق
Ex-qc quo et bono	مبادئ العدالة وحسن النية
Amiables compositeurs	التوفيق الودى
Guidliens	إرشادات
Arbitral proceedings	إجراءات التحكيم
The law governing the procedure	القانون الذى يحكم الإجراءات
Prohibit	يحظر
Lex Fori	قانون القاضى
Substantial connection	رابطة حقيقية
The territorial jurisdiction of the state	الاختصاص المكانى للدولة
A court of competent jurisdiction	محكمة لها اختصاص

The intervention of the national courts	تدخل المحاكم الوطنية
Violation of the arbitration agreement	خرق اتفاق التحكيم
The autonomous character of the arbitration clause	الكفاية الذاتية لشرط التحكيم
The mere presence of an arbitration clause should be treated as an implied waiver of jurisdictional immunity	إن مجرد وجود شرط التحكيم يعتبر وكأنه تنازل ضمنى عن الدفع بالحصانة من الاختصاص القضائى
To agree to arbitrate in another country	الاتفاق على التحكيم فى بلد آخر
International commercial arbitration is of a consensual character.	للتحكيم التجارى الدولى صفة الطابع الرضائى
There should be a connection between an arbitration clause and a particular forum which has some link to the arbitration process	يجب أن يوجد ارتباط بين شرط التحكيم ومحكمة معينة يكون لها هى الأخرى صلة بعملية التحكيم
An arbitral award	حكم التحكيم

Arbitral decision	حكم التحكيم
The Law of the Lex contractus	قانون العقد
The personal Law of the Parties	القانون الشخصى للأطراف
Lex mercatoria	قانون التجار الدولى
Stages of arbitration	مراحل التحكيم
Applicable law	القانون الواجب التطبيق
Choice of applicable law	اختيار القانون الواجب التطبيق
The law applicable to the substance of the dispute	القانون الواجب التطبيق على موضوع النزاع
To remove the dispute from the sphere of the national law of the host State	إخراج (استبعاد) النزاع من نطاق القانون الوطنى للدولة المضيفة
National Laws	القوانين الوطنية
Execution	التنفذ
Obtaining execution order	الحصول على أمر التنفيذ
Attachment	الحجز
Arbitration conventions	اتفاقيات التحكيم
Substantive Law	القانون الموضوعى

The responsibility of a State to perform an arbitration agreement	مسئولية الدولة عن تنفيذ اتفاق التحكيم
To frustrate the arbitration agreements	تعطيل اتفاق التحكيم
The other party can proceed unilaterally	الطرف الآخر يمكنه الاستمرار منفردا
The arbitration agreement is binding on the parties	اتفاق التحكيم ملزم للأطراف
The opinion of the court	رأى المحكمة
A plea	دفع
The bona fides principle	مبدأ حسن النية
An Umpire	من عين ليفصل (وحده) فى أمر اختلف فيه المحكمون
Refused to arbitrate	رفض التحكيم
The dispute was not arbitrable	المنازعات التى لا تقبل الخضوع للتحكيم
Equity	مبادئ العدالة
Commercial uage	الأعراف التجارية

5. Legal terminology in ICSID Arbitration:

Convention	اتفاقية
Stat	دولة
Nationals	مواطنين
The International Bank for Reconstruction and Development	البنك الدولى للتعمير والتنمية
Commission	لجنة
Unacceptable to governments	غير مقبول لدى الحكومات
The permanent court of arbitration	المحكمة الدائمة للتحكيم
The economic and social council of the UN	المجلس الاقتصادى والاجتماعي للأمم المتحدة
General Assembly	الجمعية العامة
Resolution	توصية
Specialized forum	قضاء متخصص
Bank's board of governors	مجلس محافظى البنك
Adopted a resolution	أخذ توصية
Executive director	المدير التنفيذى
Conciliation	التوفيق
The questions of choice of law	مشكلة تنازع القوانين

The organs of the "ICSID"	أجهزة محكمة التحكيم
Secretary - General	السكرتير العام
Registrar	مسجل (المحكمة)
Jurisdication	قضاء أو حكم أو الاختصاص القضائى
Legal dispute	نزاع قانونى
Merits of the disputes	موضوع النزاع
Netural person	شخص طبيعى
Juridical person	شخص قانونى

Consent is the cornerstone of the jurisdication of the arbitration court

الرضا هو حجز الزاوية لاختصاص محكمة التحكيم

Submission to the court	الخضوع للمحكمة
Capital receiving state	الدولة المستقبلة لرأس المال
Investment promotion legislation	قانون تشجيع الاستثمار
Formation of the arbitral tribunal	تشكيل محكمة التحكيم
Powers and functions of the tribunal	سلطات ووظائف المحكمة
Declaration	إعلان – أقرار
Written procedure	المذكرة المكتوبة
Amicable agreement	اتفاق التسوية الودية
Negotiation	مفاوضات
An arbitration agreement	اتفاق التحكيم

The Arbitration clause	شرط التحكيم
The forum selection clause	شرط اختيار المحكمة
Invalidity of arbitration clauses	بطلان شروط التحكيم
A panel of arbitrators	هيئة التحكيم
Formation of the arbitration agreement	تكوين اتفاق التحكيم
The composition of the arbitral tribunal	تكوين محكمة التحكيم
Enforcing the arbitration agreement	تطبيق شرط التحكيم
The binding character of the arbitration agreement	الطبيعة الملزمة لاتفاق التحكيم
The nullity of the arbitration clause	بطلان اتفاق التحكيم
The arbitration agreement is susceptible of invalidation	اتفاق التحكيم عرضة للإبطال
To invoke the arbitration clause	التمسك بشرط التحكيم
Immunity from adjudication	الحصانة من الخضوع للقضاء
The arbitration clause may serve as a waiver of immunity	شرط التحكيم يمكن أن يؤدى إلى التنازل عن الحصانة

States are immune from suit in foreign courts	للدول حصانة من الاختصام أمام المحاكم الأجنبية
Sovereign immunity	الحصانة السيادية
Waiver of jurisdictional immunity	التنازل عن الدفع بالحصانة السيادية من الاختصاص
Judicial decisions	أحكام قضائية
Legislative acts	الأعمال التشريعية
Executive and administrative acts	الأعمال التنفيذية والإدارية
Jurisdictional objections	اعتراضات على الاختصاص القضائى
Governments	الحكومات
Developing countries	الدول النامية
Investments	الاستثمارات
Investment disputes	منازعات الاستثمار
Resolving investment disputes	تسوية منازعات الاستثمار
Development	التنمية
The private Capital	رأس المال الخاص
The Less- developed countries	الدول الأقل تقدما
Foreign private investments	الاستثمارات الأجنبية الخاصة
Corporations	الشركات
Exporting developed countries	الدول المتقدمة المصدرة

Host state	الدول المضيفة
Political risks	المخاطر السياسية
Capital	رأس المال
Foreign corporation	شركة أجنبية
Political or economic changes	التغيرات السياسية أو الاقتصادية
Negotiation	المفاوضات
Renegotiation	إعادة التفاوض
Terms of the agreement	بنود الاتفاق
Nationalization	التأميم
Expropriation	المصادرة
The foreign investor's shares in the venture	أسهم (أو حصص) المستثمر الأجنبى فى المشروع
To resolve disputes	حل المنازعات
Adjudication	التقاضى
Litigation	الخصومة القضائية
A foreign jurisdiction	جهة اختصاص أجنبية
National interests	المصالح الوطنية

Arbitral procedures	إجراءات التحكيم
Procedural aspects	الجوانب الإجرائية
Procedural rules	القواعد الإجرائية
The arbitration process	العملية التحكيمية

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958

اتفاقيـة نيويـورك بـشأن الاعتـراف وتنفيـذ أحكـام التحكـيم الأجنبيـة لعـام (1958)

The Washington Convention on the Settlement of Investment Disputes between States and Nationals of other states of (1965)

اتفاقية واشنطون بشأن تسوية منازعات الاستثمار بين الدول ومـواطنـى الدول الأخرى لعام 1965

The European Convention on International Commercial Arbitration	الاتفاقيــة الأوربيــة بــشأن التحكـيم التجارى الدولى
Arbitrability of Sate contracts	قابلية عقود الدولة للتحكيم
Submission of State contracts to the system of International commercial arbitration	إخضـاع منازعات عقود الدولـة إلـى نظام التحكيم التجارى الدولى

Institutional arbitration	التحكيم المؤسسى
Ad hoc arbitration	التحكيم لغرض أو لقضية بعينها
The Constitution of Tribunals	تشكيل المحاكم
Public international Law	القانون الدولى العام
The Permanent Court of Arbitration	المحكمة الدائمة للتحكيم
To settle disputes peacefully	حل المنازعات سلميا
Arbitration arrangements	ترتيبات التحكيم
Long-term agreements	اتفاقات طويلة الأجل
Conciliation	مصالحة (حسم نزاع بالصلح)
To propose a settlement	اقتراح التسوية
Binding on the parties	ملزمة للأطراف
A compulsory character	ذو طبيعة الزامية
A compliance of the parties	امتثال الأطراف
The place of arbitration	مكان التحكيم
Remedies	التعويضات
The Legal nature of arbitration	الطبيعة القانونية للتحكيم
The appointment of arbitrators	تعيين المحكمين

Enforciability of the award	انفاذ الحكم التحكيمى
Exhaustation of local remedies	استنفاذ طرق التقاضى المحلية
A national arbitration system	نظام تحكيم وطنى
Conducting arbitration	إدارة التحكيم
To resolve business disputes	فض منازعات الأعمال
Designating the place of arbitration	تعيين مكان التحكيم
Provisions of the Convention	نصوص الاتفاقية
The jurisdiction of the center	اختصاص المركز
The dispute arises out of an investment	النزاع ناشئ عن استثمار
Controversies	منازعات
Argument	حجة
Convincing argument	حجة مقنعة
To hold	يحكم
Reasoning	تسبيب
An exequatur	أمر تنفيذ
Mechanism for the resolution of disputes	آلية لحل المنازعات

Claim	مطالبة
The plaintiff	المدعى
To compel arbitration	الإجبار على التحكيم
Absolute sovereignty	السيادة المطلقة
A reservation	تحفظ
Existing dispute	النزاع الموجود
Predetermined procedure	إجراء سابق تقريره
Implementation of the arbitration clause	تطبيق شرط التحكيم
The capacity to submit to arbitration	أهلية قبول الخضوع للتحكيم
The authority to sign an arbitration agreement	سلطة التوقيع على اتفاق التحكيم
Lacked Jurisdiction	قضاء غير مختص
A state may be bound by an arbitration clause	الدولـــة يمكـــن أن تـــصبح ملزمـــة بشرط التحكيم
The failure of a government to respect a contract with an alien to arbitrate disputes	إخفاق الحكومـة فـى احترام عقدها مع الأجنبى لتقديم المنازعة للتحكيم
The availability of arbitration as a means of resolving disputes	تـــوافر التحكـــيم كوســـيلة لفـــض المنازعات

An obligation to fulfill arbitral commitments and to comply with the arbitration clause	الالتـزام بالوفـاء بالتعهـد بـالتحكيم والانصياع مع شرط التحكيم
Arbitration is inherently different from litigation	التحكيم بذاته يختلف عن الخصومة القضائية
Non justiciable	غير مشمول باختصاص المحكمة
A competent arbitral tribunal	محكمة تحكيم مختصة
Compensation	التعويض
Denied of justice	إنكار العدالة
The repudiation of arbitration clause	خـرق شـرط التحكـيم (أو التنـصل منه)
The chosen method of dispute settlement	الوسيلة المختارة لتسوية المنازعة
The municipal law remedies	التعويـضات التـى يفرضـها القـانون المحلى
No party may withdraw its consent unilaterally	لا يمكـن لأى طـرف أن يـسحب رضاءه بإرادته المنفردة
The ratification of the Convention	التصديق على الاتفاقية
The binding character of the consent to ICSID arbitration	الطبيعـة الملزمـة للرضـاء بـالتحكيم فـى المركـز الـدولى لتـسوية منازعات الاستثمار

The subject matter fall under the jurisdiction of the ICSID	يقع ضمن اختصاص المركز الدولى لتسوية منازعات الاستثمار
The subject matter was outside the jurisdiction of the Center	الموضوع خارج نطاق اختصاص المركز
Ex parte	تقديم الطلب من أحد الخصوم فى غياب الخصم الآخر
The parties had consented to arbitration	الأطراف قد ارتضوا التحكيم
To renounce the consent unilaterally	يتنصل من الرضاء بإرادته المنفردة
The advantages of ICSID arbitral proceedings	مزايا التحكيم لدى المركز
The ICSID Convention avoids many of the complications of appointing the arbitrators	تتجنب اتفاقية المركز الدولى لتسوية منازعات الاستثمار الكثير من التعقيدات الناشئة عن تعيين المحكمين
Consent is the cornerstone of the jurisdiction of the Center	الرضاء هو حجر الزاوية لاختصاص المركز

A comprehensive body of procedural rules	مجموعـات متكاملـة مـن القواعـد الإجرائية
The prediction of the applicable procedures	التكهن بالإجراءات المطبقة
The discretion of the arbitral tribunal	حرية التقدير لمحكمة التحكيم
The supervision of domestic courts	رقابة المحاكم الوطنية
This provision endows the parties with ample freedom to choose their procedural rules	هـذا الـنص يمـنح الأطـراف حريـة واسـعة فـى اختيـار القواعـد الإجرائية
The majority of arbitrators	أغلبية المحكمين
The registration of a request for arbitration	تسجيل طلب التحكيم
Lex fori	قانون المحكمة
Place of proceedings	مكان الإجراءات
Jurisdictional power	سلطة الولاية القضائية
The parties have clearly expressed their common intention	التعبيـر الـصريح عـن إرادة الأطراف
The exclusion of the local law	استبعاد القانون المحلى

The task of conducting the arbitral procedures	مهمة إدارة إجراءات التحكيم
In the absence of an agreement between the parties	فى حالة غياب اتفاق بين الأطراف
A failure of one party to appear before the arbitral tribunal	إخفاق أحد الأطراف فى الحضور أمام محكمة التحكيم
The tribunal, however, may grant a grace period to the party failing to appear to present his case	للمحكمة أن تمنح مهلة للطرف الذى يخفق فى الحضور لعرض قضيته
To produce evidence	تقديم دليل
Counter claims	طلبات مقابلة
Incidental or additional claim	الطلبات الفرعية أو الإضافية
To state the reasons for the award	يذكر أسباب حكم التحكيم
The closure of proceedings	إغلاق باب الإجراءات
Irrevocable	غير قابل للإلغاء
Neither party can withdraw	لا يمكن لأى طرف أن يسحب

its consent unilaterally	رضاه بإرادته المنفردة
Diplomatic protection	الحماية الدبلوماسية
The consent must precede the filling of the request	يتعين أن يكون الرضاء سابقاً على تحرير الطلب
Notification	إخطار (تنبيه)
Diversity of nationality	اختلاف الجنسية
The Convention leaves to the parties the discretion to agree	الاتفاقية تترك حرية التقدير للأطراف للاتفاق
Inconsistent with the purpose of the Convention	متعارض مع غرض الاتفاقية
Conflicts of rights	تعارض الحقوق (تنازعها)
Mere conflicts of interests	مجرد تنازع فى المصالح
A dispute must relate to a legal right	المنازعة يجب أن تتعلق بحق قانونى
Breach of a legal obligation	خرق لالتزام قانونى
The interference of domestic courts	تدخل المحاكم الوطنية
Host States usually assert sovereign rights over their natural resources	الدول المضيفة دائما ما تدعى الحقوق السيادية على مصادرها الطبيعية

Subsequent changes in internal Laws and regulations	التعـديلات اللاحقـة فـى القـوانين واللوائح الداخلية
Stabilization clauses	شروط الثبات (مثل شروط الثبات التشريعى)
Where fundamental changes may compel modification or even termination of the contract	عندما تكون هناك تغيرات أساسية يمكن أن تلزم بتعديل أو حتى إنهاء العقد
Evaluation of compensation	تقدير التعويض
The early termination of the agreement	الإنهاء المبكر للعقد
The expected gains	المكاسب المتوقعة
Any sudden change in the laws of the host state	أى تغيير مفاجئ فى قوانين الدولة المضيفة
Stability of international economic relations	اسـتقرار العلاقـات الاقتـصادية الدولية
Express choice of the applicable law	الاختيار الصريح للقانون الواجب التطبيق
Implied choice	الاختيار الضمنى
Good will	حسن الظن

Good faith	حسن النية
The convention bestows upon the parties free regin to choose the substantive rules of law	إن الاتفاقية تمنح الأطراف قدراً غير محدود فى اختيار القواعد القانونية الموضوعية
The issue in dispute	المسألة محل النزاع
To reject the application of the national law	رفض تطبيق القانون الوطنى
Ex acequo et bono	مراعاة العدالة وحسن النية
Equitable principles	مبادئ العدالة
The tribunal must be bound by objective considerations of fairness and justice	يجب على المحكمة الالتزام بالاعتبارات الموضوعية للإنصاف وللعدالة
To have a fair and just settlement	تسوية منصفة وعادلة
The initiation of an international claim	رفع مطالبة دولية
Abrogation of arbitral decision	إلغاء حكم التحكيم



Annex Two

Examples for international contracts

1. Hotel Promotion And Service Agreement

Agreement dated this .... day of two thousands and six between X a company duly incorporated under the Companies' Ordinance of Ceylon and having its registered office at .... in the said Island (hereinafter sometimes called 'the Hotel Company') of the One Part and Y a company organized and existing under the laws of .... And having its principal place of business at .... (hereinafter sometimes called Y) of the Other Part

Witnessed

Whereas the Hotel Company is constructing a hotel in Colombo

And whereas Y and its Associates operate a chain of Hotels in .... and will operate new hotels in other parts of the world, and Y and its Associates maintain an extensive organizations, staff and facilities engaged in advertising, selling and otherwise promoting the services of the Y and in providing technical services to assure modern and efficient hotel

management and operating methods for the Y, all in the interest of facilitating and increasing international travel and trade.

And whereas the parties hereto have entered into an agreement called the Technical Assistance and Operating Agreement in respect of the construction of a hotel in .... aforesaid and its operation by Y and wherein it had been agreed that Y shall receive ......% share of the Gross Operating Profits during the operation of the Hotel.

Now therefore in consideration of the premises and the agreement herein contained and the agreement referred to hereinabove the parties hereby agree as follows:-

1) Trade Nam

The parties covenant and agree that during the term of this Agreement the Hotel (including commercial space) shall at all times be known and designated as the ....

It is recognized, however, that the name Y when used alone or in conjunction with some other word or words, is the exclusive property of Y. At the termination of this Agreement, or any renewal

thereof, such portion of the name of the Hotel as does not contain the world Y and the right to use such portion of the same shall revert to and belong exclusively to the Hotel Company, it successors and assigns. Accordingly the Hotel Company agrees that upon Y ceasing to operate the Hotel upon expiration or sooner termination of this Agreement, whether or-not there be a right or remedy to the Hotel Company for any default of Y, no provision of this Agreement shall confer upon the Hotel Company, or any transferee, assignee or successor of the Nortel Company, or any person, firm or corporation claiming by or through the Hotel Company, the right to use the name Y either alone or in conjunction with some other word or words, in the use and operation of the Hotel by the Hotel Company, or any transferee, assignee or successor of the Hotel Company, or any person, firm or corporation claiming by or through the Hotel Company.

In the event of any breach of this covenant, by the Hotel Company, Y shall be entitled to damages or relief by injunction or to any other right or remedy at law or equity, and this provision shall be deemed to survive the expiration or sooner termination of this Agreement. Provided, however, the Hotel Company

shall be entitled to continue to use all operating equipment other than silver on which the name of Y either alone or in conjunction with some other word or words has already been imprinted, inscribed or written for a period not exceeding 5 (five) years after the expiration or sooner determination of this Agreement. Provided further, however, the Hotel Company shall be entitled to continue to use the operating equipment consisting silver on which the name Y either alone or in conjunction with some other word or words has already been imprinted, inscribed or written for a period not exceeding 25 (twenty five) years after the expiration or sooner determination of this Agreement.

2. Promotion and Advertising

Y will include the Hotel in Y's institutional advertising programmes covering all Member Hotels of the Y Group, and will include the Hotel in its general promotional and selling programmes for all Member Hotels.

3. Sales and Reservation Services

The Hotel will be a part of Y sales and reservation system through which Y will act as selling agents for the Hotel outside Ceylon. Y will make such arrangements as are necessary with a worldwide

reservation system for the promotion of the Hotel.

4. Payments for specialized Hotel services and reservation facilities

For an in furtherance of the covenants and undertakings of Y as contained in the preceding two clauses:

a) It is hereby agreed that Y shall enter into an agreement or agreements with any Company or Companies engaged in providing any specialized Hotel services and it is agreed that an amount of U.S.$ ……… (U.S. dollars …………………) per annum will be paid to the aforesaid Company or Companies that Y may select in any country, at Y's sole discretion.

b) A further amount of U.S.$ ………….. (U.S. dollars ………………) per available guest room per available guest room per annum shall be paid to any company or companies nominated by Y in any country at its sole discretion in order to provide worldwide reservation facilities in respect of the Hotel.

Explanation: Available guest room in this clause shall mean a typical hotel room available for

overnight occupation by a guest for a few or reward and suites shall be deemed to consist of two such rooms.

c) The aforesaid amounts of U.S.$ .... per annum and U.S.$.............. per annum per available guest room shall be payable in quarterly instalments in the manner described herein above during the subsistence of this Agreement or any renewal thereof as provided for in clause...... of this Agreement. The aforesaid amounts specified in sub-paragraphs (a) and (b) hereinabove shall be a proper charge as provided for in sub-clauses (13) and (14) respectively of clause (a) 2 Section B of Article XV of the Technical Assistance and Operating Agreement.

d) The Hotel Company agrees to join with Y in all application to currency control authorities and to use its best efforts to induce such authorities in connection with the remittance of the amounts mentioned in sub-para (a) and sub-para (b) herein above.

5. Purchasing Agreement

At the option of the Hotel Company, Y will enter into an Agreement with the Hotel Company, pursuant

to which Y will act as a purchasing agent for the Hotel Company outside Ceylon in the purchase of materials, supplies and equipment designated by the Hotel Company for the Hotel and such purchases to be made in localities where it is expected that the most favorable prices can be obtained.

6. Consulting Services

a) Y will in consultation with the Hotel Company make available for the Hotel, its staff of consultants and specialists who are qualified to provide advice in the various departments and aspects of hotel operations. The services of the members of Y's staff and of any outside consultants engaged by Y on retainer will be rendered on the basis of reimbursement by the Hotel Company of the salaries of Y's personnel during the time they render services directly for the Hotel, and reimbursement of the amounts paid to such consultants under their retainers plus all travel, subsistence and out-of-pocket expenses incurred by such personnel and consultants in performing services for the Hotel. Such amount will be paid to Y in the currency designated by Y.

b) Y will also provide training and instruction for key

personnel of the Hotel in order to prepare them to serve the Hotel in the capacities for which they will be trained. Personnel to be trained shall be Ceylonese and will be placed in existing Hotels of the Y Group and will be instructed and supervised by the management of such Hotels, and progress reports will be made from time to time on such personnel. The Hotel Company will pay or cause to be paid the salaries, traveling and other expenses of such personnel and will reimburse Y for any out-of-pocket expenses in connection therewith, as are approved by the Hotel Company.

7. Payment

The Hotel Company shall not be liable to pay Y or to any other person or company for anything done or any service rendered under this Agreement any sum, the payment for which has not been expressly provided for in this Agreement.

8. Term

This Agreement shall continue in force and effect from the date of opening of the Hotel for a period of twenty years and may be extended for a further term of ten (10) years at the option of Y.

9. Notice

a) Any and all notices to be given hereunder shall be deemed to have been validly given if reduced to writing, signed by the party so giving the same, enclosed in a sealed envelope and mailed by registered airmail, postage pre-paid, addressed to the party for which such notice is intended at the respective address of such party as follows:

X

………………………………..

………………………………

Y

………………………………..

………………………………..

b) Any notice so given shall be deemed to have been received by the addressee on the ………. day following the day on which it shall have been posted as aforesaid.

c) Any party hereto may, by notice to the other party, change the address to which any notice intended for the party so giving such notice shall be addressed.

10. Arbitration

a) If any difference and/or dispute shall at any time arise between the parties to this Agreement, as to the construction meaning or effect of this Agreement, or any clause or matter herein contained or the rights, claims or liabilities of either party hereunder, or otherwise however, in relation to this Agreement, such differences or dispute shall be referred to Arbitration by three arbitrators, one to be appointed by each party and the two arbitrators so appointed designating the third. If either of the parties refuses or neglects to appoint its arbitrator within 60 (sixty) days after the receipt of notice by post of the appointment by the other of its arbitrator, or if the arbitrators appointed fail or neglect to appoint a third arbitrator within 60 (sixty) days of the appointment of the second of the arbitrators so appointed, then the Court of Arbitration of the International Chamber of Commerce shall have the power at the request of either party, to make the appointment which had not been made in accordance with the foregoing provisions.

b) The arbitration shall be conducted in Ceylon at

such time and place as the arbitrators or the majority of them may decide and the decision or award of a majority of arbitrators shall be final and binding on the parties, and the costs of the reference or award shall be in the discretion of the arbitrators or the majority of them as the case may be, who may also decide by whom or what manner the same, or any part thereof shall be paid; Provided however, that if the parties cannot agree to the rules pertaining to the conduct of arbitration the arbitration shall be subject to the rules of the Conciliation and Arbitration of the International Chamber of Commerce which are not inconsistent with the provisions of this clause regarding the appointment and number of arbitrators and place of arbitration.

c) The making of an award on such reference to arbitrators as herein mentioned shall be a condition precedent to any liability of the party concerned in respect of any such dispute or difference referable to arbitrators under this clause.

Provided however, that if the party concerned disclaims any liability for any claim hereunder and such claim shall not within 12 calendar months

from the date of such disclaimer have been referred to arbitration in accordance with the provisions herein contained, then such claim for all purposes be deemed to have been abandoned, and shall not thereafter be referred to arbitration or recoverable hereunder.

d) The obligation of the parties in respect of this Agreement shall continue during the arbitration proceedings and no payment due to be made to either party other than those under dispute shall be withheld on account of such proceedings.

11. Binding Effect

This Agreement shall continue to the benefit of and shall be binding upon the parties hereto and their respective successors or assigns, so long as the said Technical Assistance and Operating Agreement is in force, unless otherwise mutually agreed upon.

12. Evidence of Agreement

This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together will constitute and be one and the same Agreement which will be sufficiently

evidenced by any such original countrerpart.

In witness whereof the said X has caused its Common Seal to be affixed and .... of .... As Attorney of and for and on behalf of the said Y authorized thereto by a Power of Attorney dated the .... day of One Thousand Nine Hundred and Seventy attested by .... hath set his hand hereunto and to five others of the same tenor and date as these presents at Colombo aforesaid on this .... day of .... two Thousands and six.

The Common Seal of the said)
X us hereto affixed in the)
Presence of ....)
....................................)
....................................)
Who do hereby attest the
Sealing thereof.)

Witnesses

1.

2.

This is the identical Hotel Promotion & Service Agreement referred to in attached Power of

Attorney dated ....
. ...
attested by ....

Witnesses

1.

2.

2. ARTICLES OF INCORPORATION

عقد تاسيس

A LIMITED LIABILITY COMPANY

شركة ذات مسئولية محدودة

On this day of

أنه فى يوم   الموافق

The undersigned:

وفيما بين الموقعين أدناه :

1.

1 -

2.

2 -

3.

3 -

Have agreed among themselves on establishment of a limited liability company according to the provisions of the laws in force, and those of the Joint Stock, Limited Partnership by Shares and Limited Liability Company, issued by Law 159 of 1981 and its Executive

قد اتفقوا فيما بينهم على تاسيس شركة ذات مسئولية محدودة وفقا لأحكام القوانين النافذة ، وأحكام قانون شركات المساهمة وشركات التوصية بالأسهم والشركات ذات المسئولية المحدودة

Regulations and the provisions of the present contract. The signatories declare that they have observed the provisions and rules prescribed in the said laws, in the formation of this Company.

الصادر بالقانون رقم 159 لسنة 1981 ولائحته التنفيذية وأحكام هذا العقد ، ويقر الموقعون أنهم راعوا القواعد المقررة فى القوانين المذكورة فى تأسيس هذه الشركة .

PART I

الباب الأول

NAME, OBJECT, DURATION AND HEAD-QUARTERS OF THE COMPANY

اسم الشركة - غرضها - مدتها مركزها العام

ARTICLE 1

مادة (1)

Title and name of the Company:

______________________.

Limited Liability Company.

عنوان الشركة واسمها : شركه

______________________ ،

شركة ذات مسئولية محدودة .

ARTICLE 2

مادة (2)

Object of the Company:

غرض الشركة هو :

ARTICLE 3

مادة (3)

Duration of the Company shall be twenty five (25) years starting from the date of its entry in the Commercial Register. The duration of the

مدة الشركة هى خمسة وعشرون (25) سنة تبدأ من تاريخ قيدها فى السجل التجارى ويجوز إطالة

Company may be extended according to the conditions of the present contract, and the approval of the Committee mentioned in Article 18 of the Corporate Law 159 of 1981.

المدة بالشروط المبينة فى هذا العقد وبموافقة اللجنة المنصوص عليها فى المادة (18) من قانون الشركات رقم 159 لسنة 1981 .

ARTICLE 4

مادة (4)

The Company's head office and domicile shall be in ____________________ City. The Company directors may decide to transfer the head office to any other place in the same city. They may also decide to establish branches or agencies of the Company in Egypt or abroad.

يكون مركز الشركة الرئيسى وموطنها القانونى ____________ ، ويجوز لمديرى الشركة أن يقرروا نقل المركز الرئيسى إلى أية جهة أخرى فى نفس المدينة كما يجوز لهم أن يقرروا إنشاء فروع أو وكالات للشركة فى مصر أو فى الخارج .

In case the head office is transferred to another city, this shall take place by a resolution of an Extraordinary General Meeting of the Partners.

وإذا نقل المركز الرئيسى إلى مدينة أخرى فيلزم أن يكون ذلك بناء على قرار من الجمعية العامة غير العادية للشركاء .

PART II
CAPITAL - SHARES

الباب الثانى
رأس المال - الحصص

ARTICLE 5

مادة (5)

The capital of the Company is set at L.E. __________________ divided into __________ cash shares ,the value of each share is L.E.100. These shares are divided amongst the partners as follows:

حدد رأس مال الشركة بمبلغ ____________ جنيها مصريا ______ موزع إلى ______ حصة نقدية قيمة كل منها 100 (مائه) جنيه مصرى . وهذه الحصص موزعة بين الشركاء على الوجه الآتى :

Name & Nationality shareholders	No. of Cash Shares	Value L.E.	Sharinng %	Currency of Payment	عملة السداد	نسبة المشاركة	القيمة بالجنيه المصرى	عدد الحصص المبيعة	اسم صاحب الحصة وجنسيته
Total									الاجمالى

The partners declare that the cash shares amounting to L.E. ________ have been paid, in full, by transferring from abroad the equivalent thereof in U.S. Dollars, and that they have deposited the cash capital at ____________________ Bank one of the banks accredited by the Central Bank of Egypt to receive such funds, by virtue of the attached certificate.

ويقرر الشركاء أن الحصص النقدية دفعت بالكامل وقدرها ________ عن طريق تحويل المقابل من الخارج بعملة الدولار الأمريكى وقد تم إيداع رأس المال النقدى لدى ____________ المسجل لدى البنك المركزى المصرى على الوجه الثابت فى الشهادة المرفقة .

ARTICLE 6

مادة (6)

The shares offer equal rights in the profit and in the division of the Company's assets upon liquidation and the partners are not liable except to the extent of their shares.

تخول الحصص حقوقا متساوية فى الحصول على الأرباح وفى اقتسام موجودات الشركة عند التصفية ولا يلتزم الشركاء إلا فى حدود قيمة حصصهم .

The rights and liabilities related to the share are valid to whom so ever owns it. It is inevitable that ownership of the share is conditional to the acceptance of the provisions of the present contract and the resolutions of the General Meeting.

والحقوق والالتزامات المتعلقة بالحصة تتبعها فى أيدى كل من تؤول إليه ملكيتها ويترتب حتما على ملكية الحصة قبول أحكام هذا العقد وقرارات الجمعية العامة .

ARTICLE 7

The capital of the Company may be increased in one or several times by way of issuing new shares or by converting the free reserve capital into shares by a resolution of an extraordinary general meeting and according to the provisions of the Law and its Executive Regulations.

In case of issuing new cash shares, the existing partners shall have priority to subscribe thereto in proportion to their holdings. Such right shall be used according to the rules and provisions set by the directors unless otherwise decided by an extraordinary general meeting.

مادة (7)

يجوز زيادة رأس المال على دفعة واحدة أو أكثر سواء بإصدار حصص جديدة أو بتحويل رأس المال الاحتياطى الحر إلى حصص وذلك بقرار من الجمعية العامة غير العادية وطبقا للأحكام المنصوص عليها فى كل من القانون ولائحته التنفيذية .

وفى حالة إصدار حصص نقدية جديدة يكون للشركاء حق أفضلية الاكتتاب فيها بنسبة عدد مايملكه كل منهم من حصص . ويستعمل هذا الحق وفقا للأوضاع والشروط التى يعينها المديرون مالم تقرر الجمعية العامة غير العادية خلاف ذلك .

ARTICLE 8

The Extraordinary General Meeting may decide to reduce the capital for any reason provided it is not less than the minimum capital limit specified in the Executive Regulations of Law 159 of 1981. Reduction shall be in the way approved by the meeting whether by reducing the number of shares or redeeming some of them or decreasing the nominal value provided that the nominal value for each share does not fall below one hundred pounds.

مادة (8)

للجمعية العامة غير العادية أن تقرر تخفيض رأس المال لأى سبب وعلى أن لايقل عن الحد الأدنى لرأس المال المحدد باللائحة التنفيذية للقانون رقم 159 لسنة 1981 ويكون التخفيض بالكيفيه التى تراها الجمعية سواء عن طريق انقاص عدد الحصص او استرداد بعضها او تخفيض القيمة الأسمية على أن لاتقل القيمة الأسمية لكل منها عن مائة جنيها .

ARTICLE 9

The shares are transferable among the

مادة (9)

الحصص قابلة للانتقال بين

partners or between them and others, by means of an informal writ, and must be recorded in the register established for this purpose.

Whoever wishes to transfer his shares, must notify the Company's management by a registered letter or by facsimile confirmed by registered mail which must include the transferee's name, title, profession and address and the number of shares he is transfer- ring. The Company's management shall in turn notify the partners within the following three days. Within one month from the first notification the partners may redeem the share upon the same conditions, otherwise such right is forfeited.

If the right to recover is exercised by more than one partner, then the sold shares shall be divided between them in proportion to each one's share in the capital.

ARTICLE 10

There shall be kept at the head office of the Company a special register for the partners which shall comprise the following:

1. The names, nationalities, domiciles and professions of the partners.
2. The number and value of shares held by each of the partners.

الشركاء أو بينهم وبين الغير ، بموجب محرر عرفى ويجب أن يثبت هذا الانتقال او التصرف بالسجل المعد لذلك .

ويجب على من يعتزم بيع حصته للغير أن يقوم بأخطار ادارة الشركة بذلك بخطاب موصى عليه أو بالفاكس مفرزه بخطابات موصى عليها يتضمن اسم ولقب المتنازل اليه ومهنته ومحل اقامته وعدد الحصص المتنازل عنها ، وتقوم الأدارة بدورها بأخطار الشركاء فى خلال الثلاثة أيام التالية ، وللشركاء خلال شهر من الأخطار الأول أسترداد الحصة بالشروط نفسها والا سقط هذا الحق .

واذا استعمل حق الاسترداد أكثر من شريك قسمت الحصة المبيعة بينهم بنسبة حصة كل منهم فى رأس المال .

مادة (10)

يعد بمركز الشركة سجل خاص للشركاء يتضمن مايأتى :

1- أسماء الشركاء وجنسياتهم ومحال اقامتهم ومهنهم .

2- عدد الحصص التى يملكها كل شريك ومقدار مادفعه .

3. Cases of share assignment or transfer of ownership with indicating the date and signature of the assignor and assignee, when this takes place amongst the living and the signature of the director, the transferee, in the case of transfer by way of inheritance.

3- حالات التنازل عن الحصص أو انتقال ملكيتها مع بيان تاريخ توقيع المتنازل والمتنازل اليه فى حالة التصرف بين الأحياء وتوقيع المدير ومن آلت اليه الحصة فى حالة الانتقال بطريق الميراث .

Assignment or transfer does not bind the Company or others except from date of its entry in this register.

ولايكون للتنازل أو الانتقال أثر بالنسبة الى لشركة او الى الغير الا من تاريخ قيده فى هذا السجل .

Every partner, and any interested person other than the partners, may have access to this register during the working hours of the Company. A list comprising all details recorded in the register and any changes that may occur shall be sent during the month of January of each year to the Companies Department.

ويجوز لكل شريك ولكل ذى مصلحة من غير الشركاء الأطلاع على هذا السجل فى أوقات العمل اليومى للشركه . وترسل فى شهر يناير من كل سنة قائمة تشتمل على البيانات الوارده فى هذا السجل كل تغيير يطرأ عليها الى مصلحة الشركات .

PART III

MANAGEMENT OF THE COMPANY

الباب الثالث

ادارة الشركة

ARTICLE 11

مادة (11)

The Company shall be administered by directors, to be appointed by the General Meeting, from amongst the partners or others. As an exception of the foregoing, the partners have appointed the first staff of managers as follows:

يتولى ادارة الشركة مديرون تعينهم الجمعية العامة من بين الشركاء أو من غيرهم . واستثناء مما تقدم عين الشركاء هيئة الادارة الأولى من :

1.	(1
2.	(2
3.	(3
4.	(4

The Directors shall assume their assignments for an unlimited period.

ويباشرون المديرون وظيفتهم لمدة غير محدودة .

ARTICLE 12

The Directors shall represent the Company in its relations with third parties in this respect and in the manner determined by the General Meeting, and they shall have the broadest authorities to deal in the Company's name, and effect all contracts and dealings within the object of the Company and shall in particular appoint, suspend and dismiss the Company's agents and employees, determine their salaries, and bonuses, receive and pay all amounts, sign transfer, sell and settle all commercial promissory notes, and conclude all contracts, agreements and transactions related to the Company in cash or credit. They may also buy all materials, equipment, goods and

مادة (12)

يمثل المديرون الشركة فى علاقاتها مع الغير فى هذا الصدد وعلى الوجه الذى تعينه الجمعية العامة اوسع السلطات للتعامل باسمها وأجراء كافه العقود والمعاملات الداخله ضمن غرض الشركة وعلى الأخص تعيين ووقف وعزل وكلاء ومستخدمى الشركه وتحديد مرتباتهم وأجورهم ومكافآتهم وقبض ودفع كافه المبالغ وتوقيع وتحويل وبيع وتسديد كافه السندات الاذنيه التجاريه وأبرام جميع العقود والمشارطات والصفقات التى تتعلق بمعاملات الشركة بالنقد أو بالأجل ، ولهما شراء جميع المواد والمهمات والبضائع

movable assets and borrow by means of credit...etc.

والمنقولات والاقتراض بطريق الاعتمادات .

Regarding the loans with which no credit accounts were opened at the banks, and purchases, exchanges, sale of commercial establishments, real estate and mortgages, as well as participation in other establishments, these acts may not be undertaken except after approval of the General Meeting by a majority of the partners holding three quarters othe capital. Any such act or disposition shall not be binding to the Company unless signed by the directors in the manner specified at the beginning of this Article, or any other officer empowered to act as such with indication of his capacity.

اما القروض غير المفتوح بها اعتمادات بالبنوك والمشتريات والمبادلات وبيع المحال التجارية والعقارات والرهون وكذلك الاشتراك فى المؤسسات الاخرى فلا يجوز اجراؤها الا بعد موافقه الجمعيه العامه باغلبيه الشركاء الحائزه لثلاثه أرباع راس المال . ولايكون التصرف ملزما للشركة الا اذا وقعه المديرين على النحو الموضح بصدر هذه الماده او غيرهم من العاملين المخولين حق التوقيع عن الشركة مشفوعا بالصفة التى يتعامل بها.

ARTICLE 13

مادة (13)

The Director is subject to dismissal at any time by a causative resolution passed by the numerical majority of the partners holding, at least, three quarters of the capital. Any director may resign at the end of any financial year provided that his resignation is submitted to the General Meeting at least one month before the end of the financial year.

المدير قابل للعزل فى اى وقت بقرار مسبب يصدر بموافقة الأغلبية العددية للشركاء الحائزة لثلاثة أرباع رأس المال على الأقل . وله أن يستقيل فى نهاية السنة المالية على أن يقدم الأستقالة الى الجمعية العامة قبل انتهاء السنة المالية بشهر على الأقل .

ARTICLE 14

مادة (14)

In the event the term of any of the Directors expires, the other should, within no later than one month, call for

فى حالة انتهاء وظيفة أحد المديرين يجب على المديرين الباقين خلال شهر

the convening of an extraordinary general meeting to look into the matter and appoint a new director.

ARTICLE 15

As an internal arrangement, the Directors may, in their relations with each other, form a board of directors which shall appoint the board chairman and secretary. The Board of Directors shall meet at the request of the Chairman or two of its members whenever it is necessary for the interest of the Company. The meeting shall be held at the Company's headoffice or any other place indicated in the letter of invitation.

The meeting shall not be valid unless attended by at least half of the Board members. Any member of the Board may vote on behalf of any other member by proxy given to him by the absent member, either in simple letter form, or by telex, or by fax.

The Board shall set out the rules regulating its functions, meetings and distribution and delegation of its duties, responsibilities and competences.

Resolutions of the Board of Directors shall pass by the majority of the votes of the Directors present and in case of equality of votes, the Chairman of the meeting shall have a casting vote. Resolutions passed by the Board shall

على الأكثر أن يدعوا الجمعيه العامة غير العادية للانعقاد للنظر فى الأمر وتعيين مدير جديد .

مادة (15)

للمديرين فى علاقتهم مع بعضهم وكتدبير ذى صفة داخلية ان يؤلفوا مجلس ادارة يتولى بنفسه تعيين رئيسه وسكرتيره . ويجتمع مجلس الاداره بناءا على طلب الرئيس أو عضوين آخرين من أعضائه كلما دعت مصلحة الشركة الى ذلك . ويعقد الاجتماع فى مركز الشركة او فى أى مكان آخر يعينه خطاب الدعوة .

ولايكون انعقاده صحيحا الا بحضور نصف أعضاء مجلس الاداره على الأقل . ولعضو مجلس الادارة ان ينيب عنه أحد زملائه فى المجلس بموجب خطاب او رسالة تلكس أو فاكس .

ويضع المجلس القواعد المنظمة لاعماله ولتوزيع أختصاصاته وسلطاته والأنابة فيها .

وتصدر قرارات مجلس الادارة باغلبية اصوات المديرين الحاضرين واذا تساوت الأصوات يكون صوت الرئيس مرجحا وتثبت القرارات المذكورة فى محاضر تدون فى سجل خاص

be proved in minutes to be recorded in a special register, with its pages numbered, and signed by the directors who participated in the adoption of the resolutions. The Chairman shall ratify the copies or extracts of these minutes.

مرقومة صفحاته ويوقع عليها المديرون الذين اشتركوا فى اصدار هذه القرارات. ويصدق رئيس المجلس على صور او مستخرجات هذه المحاضر .

The Board of Directors shall debate all matters presented to it and which are related to the management of the Company's affairs.

ويتداول مجلس الادارة فى جميع المسائل المعروضة عليه والتى تتعلق بأدارة شئون الشركة .

The Board must in particular, consider and take decision in each operation or contract involving the Company in an undertaking or an expenditure in excess of L.E. 10,000 (Ten Thousand Egyptian Pounds).

ويجب على المجلس أن يبت بصفة خاصة فى كل عملية او تعاقد يترتب عليه تعهد من الشركة او مصروف تزيد قيمته عن عشرة آلاف جنيها .

Directors must implement the decisions passed by the Board of Directors and observe its instructions and directives or otherwise they are exposed to dismissal from their posts and bound to pay indemnities to the Company.

ويجب على المديرين أن يقوموا بتنفيذ القرارات الصادرة من مجلس الادارة وان يتبعوا تعليماته وارشاداته والا عزلوا من وظيفتهم والزموا بتعويضات للشركة .

ARTICLE 16

مادة (16)

Directors shall be entitled to such annual compensation as may be determined by the General Meeting of Partners to be paid to them on monthly basis, the cost of which shall be charged to the general expenditure and overheads account in addition to their right to recover representation, travel, and transport allowances. They shall also have a

للمديرين الحق فى مبلغ سنوى بصفة مكافأة سنوية تحدده الجمعيه العامه للشركاء تدفع لهم كل شهر وتقيد بحساب المصروفات العامة وذلك علاوة على حقهم فى استرداد مصروفات التمثيل وبدل السفر والأنتقال . ولهم ايضا حق الحصول على حصة فى

right to obtain certain share in the profit in the manner prescribed in Article 31 of the present contract. Such amounts shall be distributed among the directors as agreed upon by them.

الأرباح على الوجه المبين في المادة (31) من هذا العقد . ويتم توزيع هذه المبالغ على المديرين طبقا لما يتفق عليه فيما بينهم .

ARTICLE 17

All advertisements, contracts, as well as papers and printed materials issued by the Company shall bear the Company's name which will be followed or preceded by the phrase (Limited Liability Company) written in clear and legible letters. The Company's headoffice and its capital, as per the value established in its latest ratified and approved balance sheet, shall also be indicated.

مادة (17)

يجب ان تحمل الاعلانات ونسخ العقود وجميع الاوراق والمطبوعات الاخرى التي تصدر من الشركة اسم الشركة وان تسبقه أو تلحقه عبارة " شركة ذات مسئولية محدودة " مكتوبة بأحرف واضحة ومقرونة مع بيان مركز الشركة وبيان راس المال بحسب قيمته الثابتة في اخر ميزانية معتمدة للشركة .

ARTICLE 18

All notifications of the Company as referred to in these Articles of Incorporation whether between partners or between them and the Company shall be made in the form of registered letters or facsimile transmissions confirmed by registered letters.

مادة (18)

تكون تبليغات الشركة المشار اليها في هذا العقد سواء كانت بين الشركاء او بينهم وبين الشركة على هيئة خطابات موصى عليها او رسائل بالفاكس معززة بخطابات موصى عليها .

PART IV
THE GENERAL MEETING

الباب الرابع
الجمعية العامة

ARTICLE 19

The General Meeting shall represent all partners, and it may convene only in ________________.

مادة (19)

تمثل الجمعية العامة جميع الشركاء ولايجوز انعقادها الا في ________________ .

RTICLE 20

Every partner shall have the right to attend the General Meeting in person or by proxy irrespective of the number of shares he possesses. Each partner shall have a number of votes equal to the number of shares he owns, or represents at the meeting without limitation.

مادة (20)

لكل شريك حق حضور الجمعية العامة مهما كان عدد الحصص التى يمتلكها سواء كان ذلك بطريق الأصاله او بطريق أنابة شريك اخر لتمثيله فى الجمعية ولكل شريك عدد من الأصوات يقدر بعدد مايملكه او يمثله من حصص دون تحديد .

ARTICLE 21

Without prejudice to the provision of Article 286 of the Executive Regulations, the General Meeting shall be presided over by one of the Directors or his proxy in the manner determined by the partners or proxies present at the meeting with majority of their votes. The Chairman shall appoint a secretary and a vote-canvasser, provided they are approved by the General Meeting.

مادة (21)

يراس الجمعية العامة احد المديرين أو من ينيبه عنه فى ذلك على الوجه الذى يقرره الشركاء الحاضرون او الممثلون فى الجمعية بأغلبية اصواتهم ويعين الرئيس امينا للسر ومراجعا لفرز الاصوات ، على أن تقر الجمعية العامة تعيينهما ، مع مراعاة أحكام المادة 286 من اللائحة التنفيذية .

ARTICLE 22

The notice for convening the General Meeting shall be extended by registered letters or by facsimile confirmed by registered mail to each partner fifteen (15) days at least prior to the date scheduled for the meeting. Notices for convening the meeting should comprise the agenda, and the place, date and hour of the Meeting.

مادة (22)

توجه الدعوة لحضور الجمعيات العامة بموجب خطابات موصى عليها أو بالفاكس معززه بخطابات موصى عليها ترسل لكل شريك قبل موعد انعقادها بخمسة عشر يوما على الأقل . ويجب ان تشمل خطابات الدعوة على بيان جدول الاعمال ومكان الاجتماع وزمانه .

ARTICLE 23

The General Meeting may only consider and discuss the items of the agenda set out in the letters of invitation. The Meeting may, however, debate any serious matters or events which become known in the course of the Meeting. Resolutions adopted by the General Meeting in accordance with the provisions of the Company's Articles of Incorporation are binding on all the partners including the absent, dissenting and unqualified.

مادة (23)

لايجوز للجمعيه العامة ان تتداول في غير المسائل الوارده في جدول الأعمال المبين في خطاب الدعوة ومع ذلك يكون للجمعية حق المداولة في الوقائع الخطيرة التي تتكشف اثناء الاجتماع . وتكون القرارات التي تصدرها الجمعية العامة طبقا لعقد الشركة ملزمة لجميع الشركاء بما فيهم الغائبين والمخالفين في الرأى وعديمى الأهلية .

ARTICLE 24

The Ordinary General Meeting shall convene every year upon invitation from the Company's management, within the six months following the end of the Company's financial year.

It shall particularly meet to hear the report of the Directors on the Company's activities and its financial position, to approve the Balance Sheet and the Profit & Loss Account, and to determine the dividends for distribution among partners, as well as to appoint the directors and to determine their remunerations and all other issues not falling within the jurisdiction of the Extraordinary General Meeting.

The resolutions of the Ordinary General Meeting shall be valid only if adopted by the majority of votes

مادة (24)

تنعقد الجمعية العامة العادية كل سنة بناء على دعوة من أدارة الشركة خلال الستة اشهر التاليه لنهاية السنة الماليه للشركة .

وتجتمع على الأخص لسماع تقرير المديرين عن نشاط الشركة ومركزها المالى والتصديق عند اللزوم على الميزانيه وحساب الارباح والخسائر وتحديد حصص الأرباح التى توزع على الشركاء وتعيين المديرين وتحديد مكافآتهم وغير ذلك من المسائل التى لاتدخل فى اختصاص الجمعية العامة غير العادية .

ولا تكون قرارات الجمعية العامه العادية صحيحه الا اذا صدرت باغلبية الأصوات التى تمثل اغلبيه

representing the capital. If the quorum is not attained at the first meeting, the General Meeting shall convene for a second meeting within thirty (30) days from the date scheduled for the first meeting. The second Meeting shall be considered as validly held regardless of the number of shares present or represented. Resolutions shall be adopted by at least the absolute majority of the shares represented at the Meeting. In case of equality of votes, the Chairman shall have a casting vote.

رأس المال على الأقل . وفى حالة عدم توفر النصاب لصحة الأجتماع الأول تعين عقد الجمعية العامة ثانية خلال الثلاثين يوما التالية . ويعتبر اجتماعها الثانى صحيحا مهما كان عدد الحصص الحاضرة او الممثلة فيه . وتصدر القرارات بأغلبية الاصوات على الأقل وفى حالة التساوى يرجح الجانب الذى منه الرئيس .

However, the invitation to the first Meeting shall be enough if the date of the second Meeting is indicated therein.

ويكتفى بالدعوة الى الأجتماع الاول اذا حدد فيها موعد الأجتماع الثانى .

ARTICLE 25

مادة (25)

The Extraordinary General Meeting may amend the Company's Articles of Incorporation, with the exception of the Articles related to the increase of the partners' obligations unless their approval is unanimous.

للجمعيه العامه غير العاديه ان تعدل عقد الشركة عدا ما تعلق منها بزيادة التزامات الشركاء ما لم تكن موافقتهم اجماعية .

Resolutions of the Extraordinary GeMeeting shall be valid only if adopted by the numerical majority of partners holding three quarters of the capital.

ولا تكون قرارات الجمعية صحيحة الا اذا صدرت بموافقة الأغلبية العددية للشركاء الحائزة لثلاثة ارباع رأس المال على الأقل .

However, if the resolution is related to the dismissal of a director, the majority shall be counted after excluding the shares held by the Director whose

على انه اذا كان قرار يتعلق بعزل احد المديرين فان الأغلبية تحسب بعد استبعاد الحصص

dismissal is proposed. In the event the proposed resolution is affecting the rights of a given category of partners, the presence at the Meeting of the numerical majority of such shareholders who represent three quarters of their value shall be required.

التى يمثلها المدير المقترح عزله واذا كان القرار يتعلق بالمساس بحقوق فئة من اصحاب الحصص فأنه يشترط فى هذه الحالة حضور الأغلبية العددية لأصحاب تلك الحصص الذين يمثلون ثلاثة ارباع قيمتها .

ARTICLE 26

مادة (26)

The Directors may call for the convening of the Extraordinary General Meeting whenever necessary.
The Ordinary General Meeting may be called upon to hold an Extraordinary General Meeting at the request of a partner or more representmore than 5% of the capital if the request is forwarded to the Directors by registered letter or by facsimile confirmed by registered letter and eight (8) days have elapsed with the Directors failing to extend the invitation.

يجوز للمديرين دعوة الجمعية العامه لانعقاد غير عادى كلما دعت ضروره الى ذلك .
ويجوز ان تدعى الجمعية العامه العاديه لانعقاد غير عادى بناء على طلب شريك أو اكثر يمثل اكثر من 5% من رأس المال اذا طلب ذلك من المديرين بخطاب موصى عليه أو بالفاكس وانقضت ثمانية (8) ايام دون ان يقوم المديرون بتوجيه الدعوة .

The agenda for the Meeting shall be established by the party having called for the Meeting.

ويوضع جدول الاعمال بمعرفة الجهة التى وجهت الدعوة للأجتماع .

ARTICLE 27

مادة (27)

Every partner attending the General Meeting shall be entitled to discuss the items on the agenda. The Directors shall be obliged to answer all the questions of the partners to the extent that such does not expose the Company's interest to any harm.

لكل شريك اثناء انعقاد الجمعية العامه حق مناقشة المسائل الواردة فى جدول الاعمال ويكون المديرون ملزمين بالأجابة على اسئلة الشركاء بالقدر الذى لايعرض مصالح الشركة للضرر .

If a partner is not satisfied with the answer, he shall then appeal to the General Meeting and its decision shall be duly enforced.

فاذا رأى احد الشركاء ان الرد على سؤاله غير كاف احتكم الى الجمعية العامه ويكون قرارها واجب التنفيذ .

ARTICLE 28

مادة (28)

Debate during the General Assembly as well as resolutions passed thereby shall be recorded in minutes to be regularly entered in a special register, whose pages are numbered, and shall be signed by the Chairman of the meeting, the secretary, the vote canvassers and the auditor. Extracts and copies of such minutes shall be ratified and approved by the Chairman of the General Meeting.

تدون مداولات الجمعية العامه وقراراتها فى محاضر تقيد فى سجل خاص مرقومة صفحاته ويوقع عليها رئيس الجمعية وامين السر وفارز الاصوات ومراقب الحسابات ويصدق رئيس الجمعيه على صور او مستخرجات هذه المحاضر .

PART V

الباب الخامس

THE FINANCIAL YEAR, THE INVENTORY, THE FINAL ACCOUNT, THE RESERVE FUNDS, PROFIT DISTRIBUTION

سنة الشركة - الجرد - الحساب الختامى - المال الاحتياطى - توزيع الأرباح

ARTICLE 29

مادة (29)

The financial year of the Company shall be twelve (12) months commencing December 1st and ending November 30th of each year. The first financial year shall extend over the period starting as of the Company's final incorporation till November 30th of the following year.

السنة المالية للشركة اثنى عشر شهرا ميلاديا تبدأ من أول ديسمبر وتنتهى فى آخر نوفمبر من كل عام . على ان السنه الاولى تشمل المدة التى تنقضى من تاريخ تاسيس الشركة النهائى حتى أخر نوفمبر من السنة التالية .

The first General Meeting of partners shall be convened following such year.

وتنعقد اول جمعيه عامة عقب هذه السنة .

ARTICLE 30

مادة (30)

The Company's Directors should prepare for each financial year, at a time that would allow for the convening of the General Meeting within a maximum of six months from the end of the financial year, the Balance Sheet, the inventory statement as well as the Profit and Loss Account and a report on the Company's activities during the financial year, and its financial position at the end of the same year.

على مديرى الشركة ان يعدو عن كل سنة ماليه فى موعد يسمح بعقد الجمعيه العامه خلال سته أشهر على الأكثر من تاريخ انتهائها ميزانية الشركة وقائمة الجرد ، وحساب الارباح والخسائر وتقريرا عن نشاط الشركة خلال السنه الماليه ومركزها المالى فى ختام السنه ذاتها .

After fifteen (15) days of its preparation, the Balance Sheet shall be deposited at the Commercial Registration Office where any interested party may have access thereto.

وتودع الميزانيه بعد انقضاء 15 يوما من تاريخ اعدادها مكتب السجل التجارى ولكل ذى شأن ان يطلب الاطلاع عليها لديه .

During the fifteen (15) days preceding the holding of the General Meeting, every partner shall be entitled to review the said documents whether by himself or by a proxy to be elected from amongst the partners or others.

ويجوز لكل شريك خلال الخمسة عشر يوما التى تسبق انعقاد الجمعية العامة ان يطلع بنفسه او بواسطة وكيل يختاره من بين الشركاء أو من غيرهم على هذه الاوراق .

ARTICLE 31

مادة (31)

The net annual profits of the Company shall, after deduction of all general expenses and other costs, be distributed

توزع أرباح الشركة الصافيه السنوية بعد خصم جميع المصروفات العامة والتكاليف

as follows:

(1) There shall first be set aside at least five (5) percent of the net profit for the creation of a legal reserve fund. This deduction shall be discontinued immediately once the reserve fund amounts to a sum equivalent to at least fifty (50) percent of the capital. The deduction shall be resumed if and when the reserve fund falls short of the said percentage.

(2) There shall be then deducted an amount as shall be necessary to pay the partners and personnel a first dividend amounting to five (5) percent at least of the paid up capital provided that the personnel share shall not be less than ten (10) percent of the declared dividend and on the condition that the proceeds of such a share shall not exceed the total annual salaries payable to the personnel of the Company. However, if the profits of any one year are not sufficient to distribute such a first dividend, it may not be claimed from the profits of subsequent years.

(3) After the foregoing deductions, there shall be allocated no more than ten (10) percent of the remaining profits as bonus for the Directors.

(4) The balance of the profits shall then

الاخرى كما يأتى :

1 - يبدأ باقتطاع مبلغ يوازى خمسة فى المائة على الاقل من الارباح لتكوين الاحتياطى القانونى . ويقف هذا الاقتطاع متى بلغ مجموع الاحتياطى قدرا يوازى خمسين (50) فى المائة من راس المال على الأقل . ومتى قل الاحتياطى عن ذلك تعين العودة الى الاقتطاع .

2 - يقتطع بعد ذلك المبلغ اللازم لتوزيع حصة أولى من الأرباح قدرها 5% من رأس المال على الأقل على الشركاء عن قيمة حصصهم وعلى العاملين. ويكون للعاملين نصيب فى الأرباح التى يتقرر توزيعها نقدا بما لا يقل عن عشرة (10) فى المائة بشرط الا يزيد على مجموع الأجور السنوية للعاملين . على أنه اذا لم تسمح ارباح سنة من السنين بتوزيع هذه الحصة فلا يجوز المطالبة بها من أرباح السنين التالية .

3 - ويخصص بعد ماتقدم عشرة (10) فى المائة من الأرباح المتبقية على الأكثر مكافأة للمديرين .

4 - يوزع الباقى من

be distributed among the partners as well as the personnel within the limits and percentages provided for in these Articles of Incorporation, as an addi- tional dividend or carried forward, upon the recommenda- tion of the Board of Directors, to the following year or placed in a special reserve or in a special depreciation fund.

الأرباح بعد ذلك على الشركاء والعاملين فى الحدود والنسب المقررة فى هذا العقد كحصة اضافية فى الأرباح او يرحل بناء على اقتراح مجلس الادارة الى السنة المقبلة او يكون به احتياطى غير عادى او مال للأستهلاك غير عادى .

Losses, if any, shall be borne by partners in proportion to their shares provided that no partner shall be responsible beyond his own share in the capital.

أما الخسائر - ان وجدت - فيتحملها الشركاء بنسبة حصصهم دون أن يلزم أحدهم بأكثر من قيمة حصصه فى رأس المال .

ARTICLE 32

مادة (32)

Reserve fund shall be used in the best interest of the Company according to resolution of the Board of Directors.

يستعمل الاحتياطى بقرار من المديرين فيما يعود على الشركه بالنفع .

ARTICLE 33

مادة (33)

Dividends shall be paid to partners at the place and on such dates as shall be fixed by the Directors.

تدفع حصص الارباح الى الشركاء فى المكان والمواعيد التى يحددها المديرون .

AUDITING

فى مراقبة الحسابات

ARTICLE 34

مادة (34)

The Company shall have one or more auditors qualified according to the conditions set forth in the Law of Practice of the Profession of Accountancy. They shall be appointed

يكون للشركة مراقب حسابات او اكثر ممن تتوافر فيهم الشروط المقررة بقانون مزاولة مهنة المحاسبة

by the General Meeting which shall also determine their remuneration.

تعينه الجمعيه العامة وتقدر اتعابه .

As an exception of the foregoing, the founders have appointed Mr. ____________________ as the first auditor of the Company residing ____________________ .

واستثناء مما تقدم عين المؤسسون السيد/ ____________________ مراقبا أولا للشركة المقيم فى ____________________ .

The auditor, as representing the whole group of shareholders, shall be responsible for the accuracy of the information and data set forth in his report. Every partner shall have the right at the General Meeting to discuss the auditor's report and ask him to clarify any of its items.

ويسأل المراقب عن صحة البيانات الوارده فى تقريره بوصفه وكيلا عن مجموع الشركاء ولكل شريك اثناء عقد الجمعيه العامة ان يناقش تقرير المراقب وان يستوضحه عما ورد به .

PART VI

الباب السادس

DISPUTES

المنازعات

ARTICLE 35

مادة (35)

Any disputes and actions affecting the general and joint interest of the Company may not be instituted against the Directors or any one of them except in the name of all partners and by a decision from the General Meeting.

لا يجوز رفع المنازعات التى تمس المصلحة العامة والمشتركة ضد المديرين او ضد احدهم الا باسم مجموع الشركاء وبمقتضى قرار من الجمعية العامة .

Any partner wishing to institute such action must notify the Directors by registered letter one month at least before the following General Meeting and, in turn, the Directors must include such proposal in the Meeting's agenda.

ويجب على كل شريك يريد رفع نزاع من هذا القبيل ان يخطر المديرين بذلك بخطاب موصى عليه أو بالفاكس قبل انعقاد الجمعية العامة التالية بشهر واحد على الأقل ويجب على المديرين ادراج هذا الأقتراح فى جدول اعمال الجمعية .

If the General Meeting refuses the proposal, no partner may present it again in his own name. But if it is accepted, the General Meeting shall appoint one delegate or more to pursue the litigation and all relevant formal notifications.

واذا رفضت الجمعية هذا الأقتراح فلا يجوز لأى شريك اعادة طرحه باسمه الشخصى اما اذا قبل فتعين الجمعية العامة لمباشرة الدعوة مندوبا او أكثر ويجب أن توجه اليهم جميع الأعلانات الرسمية .

PART VII
DISSOLUTION - LIQUIDATION OF THE COMPANY

الباب السابع
حل الشركة - تصفيتها

ARTICLE 36

Upon expiry of the Company's duration or in the event of its dissolution before the expiry date, the General Meeting shall, at the request of the Directors, establish the mode of liquidation and appoint one or more liquidators and determine their authority. The authority of the Directors shall cease upon the appointment of the liquidators. However, the powers of the General Meeting shall continue during the whole period of liquidation until the liquidators are discharged.

مادة (36)

عند انتهاء مدة الشركة او فى حالة حلها قبل الأجل المحدد تبين الجمعية العامه بناء على طلب المديرين طريقة التصفية وتعين مصف او عدة مصفين وتحدد سلطاتهم. وتنتهى سلطة المديرين بتعيين المصفين اما سلطة الجمعية العامة فتبقى قائمة طوال مدة التصفية الى ان يتم اخلاء عهدة المصفين .

PART VIII
FINAL PROVISIONS

الباب الثامن
احكام ختامية

ARTICLE 37

Upon the Company's registration at the Commercial Register, the General Meeting should appoint one of the

مادة (37)

يجب على الجمعية العامة للشركاء ان تعين احد المحامين

lawyers accepted before the Courts of Appeal at least, as legal advisor to the Company according to the conditions and period agreed upon. Upon termination of the legal advisor's contract, the General Meeting shall either renew it or replace the advisor with another.

المقبولين امام محاكم الأستئناف على الأقل كمستشار قانونى للشركة واذا انتهى التعاقد مع المستشار القانونى تعين على الجمعية تجديده او استبداله بغيره .

As an exception to the foregoing, the partners have

واستثناء مما تقدم عين الشركاء

as the Company's first legal advisor.

مستشار قانونى للشركة .

ARTICLE 38

مادة (38)

The provisions of the Companies Law for Joint Stock Companies, Partnership Limited by shares and Limited Liability Companies, previously referred to as well as its Executive Regulations shall apply in the event for which no specific rule is set forth in these Articles of Incorporation.

تسرى احكام قانون شركات المساهمة وشركات التوصية بالأسهم والشركات ذات المسئولية المحدودة المشار اليه ولائحته التنفيذية فيما لم يرد بشأنه نص خاص فى هذا العقد .

PART IX
FINAL REGULATIONS

الباب التاسع
قواعد ختامية

ARTICLE 39

مادة (39)

The present Articles of Incorporation shall be recorded at the Commercial Register and published according to the Law.

يقيد هذا العقد فى السجل التجارى وينشر طبقا للقانون وقد فوض الشركاء مكتب

to severally or jointly take all necessary procedures in this connection.Costs, expenses and wages spent by reason of the formation of the Company shall be charged to the general expenses and overheads account of the Company.

فى ان يتخذوا مجتمعين أو منفردين كافة الأجراءات اللازمة فى هذا الشأن . والمصروفات والنفقات والأجور والتكاليف التى تم انفاقها فى سبيل تأسيس الشركة تخصم من حساب المصروفات العامة .

3. A Lease Contract for a Vacant Land According to Law No. 4 of 1996

عقد ايجار ارض فضاء طبقا للقانون رقم 4 لسنة 1996

On this day , 2000

أنه فى يوم الموافق / /2000

This lease is made between cxdsew32

حرر هذا العقد بين كل من :-

First:

أولا :

Address:

المقيم فى

Hereinafter referred to as the "Lessor"

(ويشار اليه فيما بعد بالمؤجر)

Second:

ثانيا: شركة

Hereinafter referred to as "Lessee"

(وشار اليه فيما بعد بالمستأجر)

Preamble

تمهيـــد

The Lessor is the owner of a plot of a Vacant land of __________ area (_________) No.____ and which into his possession by virtue of ____________ ______________________________.

المـؤجر يمتلـك قطعـة ارض فـضاء بمساحة قدرها ________ (________) بـــرقم ________ والتى آلت اليه بموجب ____________ . ____________________________

WHEREAS the Lessee is desirous to lease a parking lot for the cars of the Company and his employees. The

ولما كان المستأجر يرغب فى ايجاد مكان لايواء السيارات الخاصة بالشركة لموظفيها. وبعرض رغبة المستأجر فى

Lessor accepted to lease the said plot of land for the purpose of parking garage for the Lessor's cars.

تأجير هذه المساحة وذلك لاستخدامها كمكان لايواء وجراج لسياراته فقد وافق المؤجر على تأجير تلك المساحة للمستأجر .

Both parties declared their legal competences and have agreed to the following:

وبعد أن أقر الطرفان بأهليتهما للتعاقد والتصرف اتفقا على مايلى :

Article 1

البند الأول

The above Preamble is considered an integral part of this Contract and complementary to its provision

يعتبر التمهيد السابق جزء لا يتجزأ من هذا العقد ومكملا ومتمما لاحكامه.

Article 2

البند الثانى

Both parties acknowledge that the information given hereinafter is correct and true and declared their responsibility thereof.

اقر الطرفان بصحة جميع البيانات المذكورة فى هذا العقد وبمسئولية كل منهما عن سلامة البيانات الواردة فيها.

Article 3

البند الثالث

The Lessor has leased a plot land No. _______ of area equal to _______ meter square to the Lessee to be used for the purpose of parking lot for cars of the Company. This area of vacant land is located at _________ according to the attached drawing and the boundaries thereof are as follows:

اجر المؤجر الى المستأجر القابل لذلك قطعة الارض رقم ________ وتبلغ مساحتها ___________ وذلك لاستخدامها كمكان وجراج لايواء السيارات الخاصة بالمستأجر حيث تقع هذه المساحة فى ____________ وطبقا للرسم الكروكى المرفق وحدودها كالتالى :

Eastern Boundary

الحد الشرقى :

Northern Boundary

الحد البحرى:

Southern Boundary

الحد القبلى :

Western Boundary

الحد الغربى:

Descript as follows:

ووصفها كالتالى :

Article 4

The term of this lease shall be an extended year starting from / / 2000 and terminating on / / 200 , and is renewable for a similar period/s unless otherwise one of the parties notifies the other at least one month prior to the end of the original period or the renewed period by virtue of a registered letter with acknowledgement of receipt.

البند الرابع

مدة هذا العقد سنة تبدأ من / /2000 وتنتهى فى / /2001 قابلة للتجديد لمدة أو مدد أخرى مالم يخطر أحد الطرفين الآخر برغبته فى عدم التجديد قبل نهاية المدة الأصلية أو أية مدة مجددة بشهر على الأقل بموجب خطاب موصى عليه بعلم الوصول.

Article 5

Both parties agrees that the rental value of the land subject to this contract to be equal to US $ _____ /month, To be paid in advance every ...months against a receipt confirming payment. The Lessor shall receive the sum of US$ …….. as a deposit refundable upon termination of the lease contract.

In the event of a change in the enforcement of the new policy of the Foreign Exchange Department regarding the obligation of a foreign company in Egypt to pay all its local expenses in Egyptian pounds the lessor shall accept to receive the rental value in Egyptian pounds converted at the official exchange rate applicable on the date of payment.

البند الخامس

اتفق الطرفان على تحديد القيمة الايجارية للارض الفضاء موضوع هذا العقد بمبلغ ________ دولار أمريكى شهريا تدفع كل ________ مقدما مقابل الايصال الدال على السدا كما تسلم المؤجر من المستأجر مبلغ ________ كتأمين يسترد فى نهاية المدة المحددة لانتهاء عقد الايجار .

وفى حالة حدوث تغيير فى تنفيذ سياسة جديدة فى ادارة النقد الاجنبى بشأن الزام أى شركة أجنبية فى مصر بسداد جميع مصروفاتها المحلية بالجنيه المصرى. فعلى المؤجر أن يقبل سداد القيمة الايجارية بالجنيه المصرى بعد تحويله بسعر الصرف المطبق وقت السداد .

Article 6

The Lessee shall have the right, with the consent of the Lessor, and such consent shall not be unreasonable withheld, during the period of this lease, to make alteration, attach fixtures and erect additions in or upon the leased Premises. Fixtures and additions so placed in or upon or attached to the said Premises shall be and will remain the property prior of the Lessee. The Lessee has the right to remove its property prior to the end of this Lease. The Lessee shall restore those areas affected by the alternation of the Lessee to the same conditions as it received them except for normal use and fair wear and tear. The Lessor has the option to request the alterations remain in place and purchase such alteration from the Lessee at fair market value.

البند السادس

يكون للمستأجر الحق ، بعد حصوله على موافقة المؤجر ، فى اجراء تعديلات أو تثبيت اجزاء أو اقامة ملحقات فى أو على الوحدة المؤجرة ، على الا يكون عدم الموافقة مبنى على اسباب غير منطقية . وتبقى هذه التثبيتات والملحقات مملوكة للمستأجر ويكون له الحق فى نقلها فى نهاية مدة التعاقد . ويتسلم الطرف المؤجر العين المؤجرة فى نهاية مدة التعاقد بعد ازالة التغييرات التى تم عملها بحيث تعود الى حالتها الاولى عند التسليم. ويمكن للمؤجر أن يطلب بقاء التغييرات التى تمت على أن يدفع للمستأجر مقابل مادى يتناسب مع القيمة الفعلية لها.

Article 7

The Lessee acknowledges that he has examined the vacant land and declares its suitability for the purpose of a parking lot. Thereupon the Lessor is hereby obligated to deliver the said land ready for use as a parking lot.

البند السابع

يقر الطرف الثانى أنه عاين الأرض محل الاجارة المعاينة التامة النافية للجهالة شرعا وأنه أقر بصلاحية الارض كمكان لايواء السيارات . ويلتزم المؤجر فى مقابل ذلك بتسليم الارض ممهدة ومعدة للاستغلال المخصصة له طبقا لهذا العقد .

Article 8

Both Parties agreed to the lessee's right to install whatever is necessary for best use of the purpose the leased land is designated for, in accordance with this contract, such as electricity and water. After obtaining the

البند الثامن

اتفق الطرفان على حق المستأجر فى ادخال ما يراه ضرورى ومناسب لاستغلال العين المؤجرة فيما خصصت من اجله طبقا لهذا العقد ، من مرافق كالكهرباء والمياه وذلك للاستغلال الامثل للأرض ، وذلك بعد

consent of the Lessor provided that such consent shall not be unreasonably withheld.

الحصول على موافقة المؤجر على الا يكون عدم الموافقة مبنى على اسباب غير منطقية.

Article 9

The Lessor confirms that his ownership of said land is free of any disputes as well as any legally justifiable allegations made by third parties, the Lessor or any one of his people.

البند التاسع

يقر الطرف الأول المؤجر أنه حائز للأرض المؤجرة بموجب هذا العقد حيازة هادئة ومستقرة وانه مسئول عن أى ادعاء من قبل الغير يستند الى سبب قانونى صادر من المؤجر أو احد اعوانه .

Article 10

The Lessor shall be responsible for furnishing the governmental licenses required for the use of the land for the purpose allocated for, provided that such governmental requirements finished before delivered of the land.

البند العاشر

يلتزم المؤجر بالحصول على التراخيص اللازمة لاستخدام الارض فى الغرض المخصصة له، على أن يتم ذلك قبل تسليم الأرض لاستخدامها فى الغرض المشار اليه.

Article 11

__________ Court of First Instances shall have jurisdiction to consider any disputes arise between the two parties regarding execution or interpretation of the provisions of this contract. The Egyptian laws are the applicable law that govern this contract.

البند الحادى عشر

فى حالة نشوء نزاع بين الطرفين فى تفسير أو تطبيق احكام هذا العقد تختص محكمة __________ بنظر هذا النزاع ويطبق القانون المصرى.

Article 12

Should any one of the parties fail to abide by the provisions of this contract, this contract shall automatically be considered cancelled without need for notification or warning or undertaking any legal

البند الثانى عشر

اذا اخل أى من الطرفين بالتزاماته المفروضة عليه تجاه الاخر بموجب هذا العقد، يعتبر هذا العقد مفسوخا من تلقاء نفسه دون حاجة لاخطار أو أنذار أو اتخاذ أى

procedures.

Article 13

In the event of termination of the Lessee's project in Egypt, the Lessee may cause an early termination of this Lease without any penalty or other liability on the part of the Lessee whatsoever, provided that the Lessee shall inform the Lessor with 30 days prior written notice.

Article 14

This contract has been drawn up in both English and Arabic language. In the event of a conflict between the two languages, the ________ language shall prevail.

Article 15

This contract is made up of ____ copies one for each party to act upon.

Signature

1 -

2 -

اجراءات رسمية .

البند الثالث عشر

يحق للمستأجر اذا انتهت اعماله فى مصر قبل نهاية مدته أو أضطر لمغادرة البلاد لأى سبب من الاسباب ، أن ينهى عقد الايجار دون تعويض للمؤجر ، على أن يخطر المؤجر قبل انهاء العقد بشهر .

البند الرابع عشر

تحرر هذا العقد باللغتين الانجليزية والعربية، وفى حالة وجود خلاف بين اللغتين الانجليزية والعربية فيعتد باللغة ________________ .

البند الخامس عشر

تحرر هذا العقد من ____________ بيد كل طرف نسخة للعمل بموجبها عند اللزوم.

توقيـــع

1 -

2 -

4. EMPLOYMENT CONTRACT
FOR
A DEFINITE PERIOD

عقـد عمل

محدد المـــــدة

This Contract is made and entered into in the ______________ on this day of / / 2000 between:

تـــم ابـــرام هـــذا العقـــــد فـــى ______________ فى يوم ______________ الموافق / /2000 بين كل مـن :

1. ____________________
located at ____________________
____________________,
represented in this contract by Mr. ____________________, in his capacity as ____________________
(Hereinafter referred to as "the Employer")

1- شركة ____________________
والكـائن مقرهـا فـى ____________________
____
ويمثلها فى التوقيع على هذا العقد السيد/ ____________________ بصفته ____________________.
ويشار اليهـا فيمـا يلـى باسـم "صـاحب العمل".

2. Mr. ____________________
residing at ____________________
____
Nationality____________________
I.D. Card No. or Passport No.:____________________
(hereinafter referred to as "the Manager")

2 - السيد/ ____________________
المقـــيم فـى ____________________
____
الجنسية ____________________
بطاقة عائلية/شخصية رقم ____________________
جواز سفر رقم ____________________
(والمـشـــار اليــــــه فيمــا بعــد بالمدير)

Both Parties acknowledged their competence to act and agreed as follows:

اقــر كـــــــــل مـــن الطــــرفين بأهليتهمـــــا للتعاقـــــــد واتفقا علـى مـا يلى :

Preamble

تمهيـــد

As the Company ____________________ shall establish a representative office for the Company in the Arab Republic of Egypt to conduct studies, market survey and

حيث أن شركة ____________________ ســوف تقـوم بانـشاء مكتـــــب تمثيـــــل للشركة فى جمهوريـــــــة مصـــر العربيـة يقـــــوم علـــــى دراســة ومراقبــــــة

researches of the Egyptian market to determine the Company's chances of business in Egypt.

السـوق المصرية والقيام بأبحـاث وتقريـر مؤشرات الشركة للقيام بأعمال مزدهرة وأكيدة فى مصر .

As the Company wishes to appoint a Manager for the Representative Office in Egypt, both Parties have agreed to execute this contract and employ the second party as Manager of the Representative office of the Company in Egypt, they have agreed as follows:

وحيث أن الشركة ترغب فى تعيين مديرا لمكتب التمثيل فى مصر فقد تلاقت ارادة الطرفين لتحرير هذا العقد بتعيين الطرف الثانى مديرا لمكتب تمثيل الشركة الطرف الأول فى مصر طبقا للشروط الآتية :

ARTICLE 1 :

مادة (1)

The above-mentioned preamble is considered an integral part of this Contract.

يعتبر التمهيد السابق جزا لا يتجزأ من هذا العقد .

ARTICLE 2: Position

مادة (2) الوظيفة :

____________________ (Employer) agrees to employ Mr. ____________ as Manager of the representative office in the Arab Republic of Egypt and the Employee agrees to serve the Employer in the position of Manager of the Representative Office.

توافق شركة __________ (صاحب العمل) على تعيين السيد/ مديرا __________ لمكتب التمثيل بجمهورية مصر العربية، ويوافق سيادته على خدمة صاحب العمل فى وظيفة مدير مكتب التمثيل .

ARTICLE 3: Manager's Obligations and Undertakings

مادة (3) التزامات وتعهدات المدير:

3-1 The Manager is obliged to execute all orders and instructions issued by the Employer or by any authorized supervisor and to perform any job or duty assigned to him.

1-3 يلتزم المدير بتنفيذ كافة الاوامر والتعليمات التى تصدر اليه من صاحب العمل او اى رئيس له ، وأن يقوم بأداء اى عمل يسند اليه.

3-2 The Manager undertakes to maintain the confidentiality of all information, contacts and contents of the documents pertaining to Employer.

The Manager shall not disclose to any unauthorized person, legal entity, or any third party, either during his employment with the Employer or after its termination for any reason, any information about the interests or business of the Employer.

The Manager undertakes, and for a period of two years from the date of termination of his employment, to maintain the secrecy related to the Employer's work and his clients .

2-3 يتعهد المدير بالمحافظة على سرية كافة المعلومات والاتصالات ومحتويات المستندات الخاصة بصاحب العمل.

ولا يجوز للمدير أن يفشى لمن لا يحق لهم من الأشخاص الطبيعيين أو الاعتباريين أو اى طرف آخر باية بيانات عن مصالح صاحب العمل أو أعماله سواء كان ذلك أثناء مدة خدمته أو بعد انتهائها لاى سبب كان .

ويتعهد المدير ولمدة سنتين من تاريخ انتهاء تعاقده مع صاحب العمل بان يحافظ على الأسرار الخاصة بأعمال صاحب العمل وعملائه .

3-3 The Manager undertakes, immediately upon the termination of this Contract for any reason whatsoever, to deliver to the Employer all Company's funds, documents, or property in his possession.

3-3 يتعهد المدير بان يسلم الى صاحب العمل بمجرد انتهاء عمله بمكتب التمثيل لاى سبب من الاسباب كل ما بحوزته من اموال او مستندات او عهد او ممتلكات تخص الشركه.

3-4 The Manager agrees that his obligations and undertakings as set forth in this present Contract are an integral part of his fundamental obligations and that the careful and diligent discharge thereof is one of the basic conditions of his

4-3 يقر المدير بأن تعهداته والتزاماته الواردة فى هذا العقد جزء لا يتجزأ من التزاماته الجوهرية وان تنفيذها بدقة وعناية شرط اساسى من

Employment Contract. Should the Employee breach any of these obligations, the Employer shall have the right to terminate his services without indemnity.

شروط العقد بحيث اذا اخل بأى منها يكون لرب العمل الحق فى انهاء خدمته فورا بدون اى تعويض .

3-5 The Manager undertakes to devote the whole of his time and attention to the Employer's business, to the satisfaction of the Employer and in accordance with the Employer's work and disciplinary regulations and Manager undertakes not to engage in any other work either for the his account or for a third party, whether with or without remuneration and whether or not within or outside the official working hours or during his annual leave, without the prior written approval of the Employer, nor shall the Manager participate, either directly or indirectly in any commercial activity or in any activity which in the Employer's opinion conflicts with its interests.

5-3 يتعهد المدير بتكريس كل وقته وعنايته لاعمال صاحب العمل ،والعمل على ارضائه وذلك طبقا للائحتى تنظيم العمل والجزاءات لصاحب العمل، والا يلتحق بأى عمل اخر سواء لحسابه الخاص او لحساب اى طرف ثالث سواء بأجر او بدون اجر وسواء كان ذلك اثناء اوقات العمل الرسمية او فى غيرها، او اثناء اجازته السنوية الا بموافقة كتابية مسبقة من صاحب العمل كما لا يجوز للمدير أن يشترك مباشرة أو غير مباشرة فى اى عمل تجارى او اى نشاط اخر قد يعتبره صاحب العمل متعارضاً مع مصالحه .

3.6 In the event, Manager desires to leave work, he has to notify the Employer, in writing, at least thirty days prior to his leaving the work and should the Manager violate this condition, he shall be obliged to compensate the Employer for the damages sustained as a result of his violation.

6-3 يلتزم المدير إذا ما رغب فى ترك العمل أن يخطر صاحب العمل بهذه الرغبة كتابة قبل ثلاثين يوما على الأقل من تاريخ ترك العمل وفى حالة مخالفته لذلك يكون ملزما بتعويض صاحب العمل عن الأضرار التى لحقت به من جراء ذلك .

ARTICLE 4: Term of Employment

The employment shall be for a period of one year, commencing on --/--/2000 and ending on -- /-- /2000 .

This Contract shall automatically be terminated upon the expiry of the period specified in this Contract, without notice or payment of indemnity and the employment of the Manager shall not be renewed or continued by any means except by a written agreement signed by the Employer.

مادة (4) مـــــدة الاستخدام :

مـــدة هذا العقد سنة واحــــــــدة تبـــدأ مـــن / / 2000 وتنتهـــى بتاريـــخ / 2000/ .

هـــذا العقـــد ينتهـــى تلقائيـــــا بانتهـــــاء المـــــدة المعينـــة فـــى هـــذا العـــقد، وذلـك دون اخطـار ودون اى تعويـــض عـــن ذلـــــك ، ولا يجـدد عقـــد عمـل المدير او يستمر فـى تنفيـــذه بأيـــة وسـيله الا باتفـــاق مكتـوب موقـع مـن صاحب من العمـــل.

ARTICLE 5

The Manager shall serve a probation period for the first three months of his employment, beginning with the above stated date of commencement of employment. At any time during or at the end of the said period, the Employer shall be entitled to terminate this Employment Contract without need for prior notice and without any indemnity other than wages earned up to the date of termination.

مادة (5)

يكـــون المدير تحت الاختـــبار خـــلال فتــــرة الثلاثـــة اشهـــر الاولـــى مـــن بـــدء تعيينـه، وتبـدأ هـــذه الفتـــرة اعتبـارا مـن تـاريخ سريـــان هـذا العقـد0 ويكـون لصاحـب العمـل خلال هـذه الفتـــرة او فى نهايتها انهـاء هـذا العقد دون حـــاجه الـى اخطـار مسبق ودون ايـــة مكافأة او تعويـض عدا ما يكـون مستـحقا للمدير من اجر عن الفترة السابقة علـى تاريخ الانهاء 0

ARTICLE 6: Salary and Allowances

The Manager shall be paid a monthly basic salary of ________________ plus the following allowances:

-
-
-

مادة (6) المقابل المادى والحوافز :

يؤدى للمدير أجـــر شهرى اساســى قـدرة ____________ بالأضـــافة إلـــى البدلات التالية :

-
-
-

ARTICLE 7 : Taxes And Other Withholdings

The Manager consents to any withholdings to be made by the Employer from his earnings as provided for in the laws applicable in Egypt.

مادة (7) الضرائب والاستقطاعات الاخرى:

يقبل المدير بأية استقطاعات يجريها صاحب العمل من مستحقاته بحسب ما تفرضه القوانين السارية فى مصر0

ARTICLE 8: Working Hours

Working hours shall be those established by Employer provided that the hours established do not exceed the maximum fixed by the Labor Law and the related Ministerial Decrees.

The Employer may from time to time and, at his sole discretion, modify the established working hours according to the work circumstances and needs, provided that such modified hours do not exceed the hours determined by law or violate any law or ministerial decrees in this concern. The Manager shall claim no additional salary or other compensation for such working hours so long as the total working hours does not exceed the maximum fixed by the law.

مادة (8) ساعات العمل :

ساعات العمل هى تلك التى يحددها صاحب العمل على الا يزيد عددها عن الحد الاقصى المبين فى قانون العمل والقرارات الوزارية المكملة له0

ويجوز لصاحب العمل - فى اى وقت يشاء ووفقا لتقديره المنفرد ان يعدل من مواعيد العمل طبقا لواجبات العمل والتزاماته على ان يكون ذلك فى حدود ساعات العمل المحددة بالقانون والقرارت الوزارية الصادرة فى هذا الخصوص ، ويقر المدير بانه لن يطالب بأى مرتب اضافى او مكافأة عن ساعات العمل تلك طالما أنها لم تتجاوز الحد الاقصى المنصوص عليه فى القانون0

ARTICLE 9: Annual Leave

After the first full year of employment with Employer, the Manager shall be entitled to annual leave of twenty-one calendar days, with full pay, to be increased to a Gregorian month after ten consecutive years of employment with the Employer. During the

مادة (9) الاجازة السنوية :

تكون مدة الاجازة السنوية 21 يوما بأجر كامل لمن امضى سنه ميلاديه كاملة فى خدمة صاحب العمل وتزاد مدة الاجازة الى شهر ميلادى كامل متى امضى المدير فى خدمة صاحب العمل عشر سنوات

first year of employment, the Manager shall be entitled to annual leave of fifteen calendar days which may be taken after the Manager has been employed for six months. Use of annual leave shall be subject to rules and regulations established by Employer.

متصلة وتقتصر الاجازة السنوية فى السنه الاولى من خدمة المدير على خمسة عشر يوما ولا يستحقها الا بعد مضى ستة اشهر من تاريخ التحاقه بالعمل ويراعى فى استعمال الاجازة السنوية القواعد واللوائح التى يقررها صاحب العمل 0

ARTICLE 10: Reassignment And Transfer

مادة (10) التكليف والنقل:

The Employer shall have the right to assign the Manager to any other duties within the nature of the Manager's qualifications.

لصاحب العمل الحق فى تكليف المدير بأى عمل اخر او فى اداء اى واجب اخر يدخل ضمن طبيعة مؤهلات المدير.

ARTICLE 11: Applicable Law And Regulations

مادة (11) القانون واجب التطبيق واللوائح:

11-1 The provisions of the Egyptian Labour Law No. 137 of 1981, and any other Egyptian laws and of the Ministerial Decrees issued for the implementation thereof shall be deemed complementary to the provisions of this Contract.

1-11 تعتبر احكام قانون العمل المصرى رقم 137 لسنة 1981 والقوانين المصرية الاخرى والقرارات الوزارية المنفذة لها مكملة لما ورد بهذا العقد من احكام .

11-2 The Company Rules and Penalty Regulations are considered an integral part of this Contract.

2-11 تعتبر لائحتا تنظيم العمل والجزاءات بالشركة جزءا متمما ومكملا لهذا العقد.

11-3 The Manager shall diligently apply and follow all the Employer's current and future regulations and rules of conduct and behaviour as it may issue.

3-11 تطبيق واتباع لوائح صاحب العمل الحالية وما يستجد منها وما يصدره من قواعد تتعلق بالسير والسلوك.

11-4 This Contract shall be governed by the laws in force in the Arab Republic of Egypt.

4-11 يخضع هذا العقد للقوانين السارية فى جمهورية مصر العربية.

ARTICLE 12: Termination Of The Contract

مادة (12) انهاء العقد:

This Contract shall be terminated for any of the reasons provided in Labour Law No. 137 of 1981 or in the Employer's Work Regulations, Internal Policies and Penalty Chart.

ينتهى هذا العقد باحد الاسباب المبينة فى قانون العمل رقم 137سنة 1981 ولوائح رب العمل ونظمه الداخلية ولائحة الجزاءات 0

Article 13: Disputes And Jurisdiction

مادة (13) المنازعات والاختصاص القضائى :

Any dispute arising in connection with the execution or interpretation of this Contract shall be settled by the relevant Egyptian courts according to the text of this Contract.

تختص المحاكم المصرية بالفصل فى اى نزاع ينشأ عن تنفيذ هذا العقد او تفسيره ويكون الاحتكام فى ذلك الى نصوص هذا العقد0

Article 14: Notices

مادة (14) الاخطارات :

Notices required by this Contract shall be sent to the Manager by registered mail against signature for receipt. Any notice sent to the Manager at the address stated in this Contract shall be deemed effectively given unless the Manger shall have duly notified the Employer, in writing, of the change in his address immediately upon such change taking place.

ترسل الاخطارات المتعلقة بهذا العقد الى المدير بالبريد مقابل ايصال بالاستلام واى اخطار يتم ارساله الى المدير على العنوان الثابت بهذا العقد يعتبر منتجا لاثاره قانونا ويقوم العامل باخطار صاحب العمل كتابة بتغيير عنوانه فور حدوث هذا التغيير.

Article 15: Effectiveness of the Contract

This Contract shall be valid and legally binding on both parties from the date the Manager is assigned his duties by the Employer.

This Contract is made in three identical copies, each party receiving one singed copy to act accordingly, and the third copy shall be delivered to the competent Social Insurance Office.

Manager

Signature : ____________________
Name : ____________________

Employer

Signature: ____________________
Name : ____________________
Title : ____________________

مادة (15) سريان العقد :

يسرى هذا العقد وينفذ فى مواجهة طرفيه اعتبارا من تاريخ تسلم المدير لعمله 0

تحرر هذا العقد من ثلاثة نسخ متطابقة أستلم كل طرف نسخة موقعة للعمل بمقتضاها وتسلم الثالثة لمكتب التأمينات الاجتماعية المختصة .

المديــــر

التوقيع : ____________________
الاســـم : ____________________

صاحب العمل

التوقيع : ____________________
الاسم : ____________________
الصفة : ____________________

Annex (3)
United Nations convention on contracts for the international sale of goods

The states parties to this convention,

Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Being of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

Have agreed as follows:

Part 1
Sphere Of Application and General Provisions

Chapter 1
Sphere Of Application

Article 1

1. This Convention applies to contracts of sale of goods between parties whose places of business are in different States:
   a) when the States are Contracting States; or
   b) when the rules of private international law lead to the application of the law of a Contracting State.
2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.
3. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales:

a) of goods bought for personal family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

b) by auction;

c) on execution or otherwise by authority of law;

d) of stocks, shares, investment securities, negotiable instruments or money;

e) of ships, vessels, hovercraft of aircraft;

f) of electricity.

Article 3

1. Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

2. This Convention does not apply to contracts in which the preponderant part of the obligations of

the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

a) the validity of the contract or of any of its provisions or of any usage;

b) the effect which the contract may have on the property in the goods sold.

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

Chapter II
General Provisions

Article 7

1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

1. For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.
2. If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding

that a reasonable person of the same kind as the other party would have had in the same circumstances.

3. In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any parties which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

1. The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

2. The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

b) if a party does not have a place of business, reference is to made to his habitual residence.

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention "writing" includes telegram and telex.

Part II
Formation Of The Contract

Article 14

1. A proposal for concluding a contract addressed to one or more specific persons constitutes and offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or make provision for determining the quality and the price.
2. A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

1, An offer becomes effective when it reaches the offeree.

2. An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

1. Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

2. However., an offer cannot be revoked:

   a) if it indicates, whether by stating a fixed-time for acceptance or otherwise, that it is irrevocable; or

   b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

Article 18

1. A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

2. An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.
3. However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed with the period of time laid down in the preceding paragraph.

Article 19

1. A reply to an offer which purports to be an acceptance but contains additions, limitations or

other modifications or other modifications is a rejection of the offer and constitutes a counter-offer.

2. However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

3. Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

1. A period of time for acceptance fixed by the offeror in a telegram or a letter beings to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the

envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, beings to run from the moment that the offer reaches the offeree.

2. Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

1. A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

2. If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally

informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the sametime as the acceptance would have become effective.

Article 23

A contracts is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Conventions.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

Part II
Sale Good

Chapter I
General Provisions

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of the Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

1. A contract may be modified or terminated by the mere agreement of the parties.
2. A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

Chapter II
Obligations Of The Seller

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property

in the goods, as required by the contract and this Convention.

Section I
Delivery of the goods and handing over of documents

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) if the contract of sale involves carriage of the goods- in handing the good over to the first carrier for transmission to the buyer.

(b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place – in placing the goods at the buyer's disposal at that place;

(c) in other cases- in placing the goods at the buyer's disposal at the place where the seller had his place

of business at the time of the conclusion of the contract.

Article 32

1. If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the gods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.
2. If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.
3. If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

(a) if a date is fixed by or determinable from the

contract, on that date;

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

(c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II
Conformity of the goods and third party claims

Article 34

1. The seller must deliver goods which are of the

quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

2. Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

   (a) are fit for the purposes for which goods of the same description would ordinarily be used;

   (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment;

   (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

   (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

3. The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the

conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

Article 36

1. The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.
2. The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods

delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

1. The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.
2. If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.
3. If the goods are redirected in transit or redispatched by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispatch, examination may be deferred until after the goods have arrived at the new destination.

Article 39

1. The buyer loses the right to rely on a lack of conformity of the goods if the does not give notice

to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

2. In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods wee actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual properly, the seller's obligation is governed by article 42.

Article 42

1. The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

    (a) under the law of the State where the goods will he resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

    (b) in any other case, under the law of the State where the buyer has his place of business.

2. The obligation of the seller under the preceding paragraph does not extend to cases where:

    (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right of claim; or

    (b) the right or claim results from the seller's compliance with technical drawings,

designs, formulae or other such specifications furnished by the buyer.

Article 43

1. The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.
2. The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph 1 of article 39 and paragraph 1 of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III
Remedies for breach of contract by the seller

Article 45

1. If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

   (a) exercise the rights provided in articles 46 to 52;

   (b) claim damages as provided in article 74 to 77.

2. The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

3. No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

1. The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

2. If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a

fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

3. If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

1. The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.
2. Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

1. Subject to article 49, the seller may, even after the

date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainly of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

2. If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. They buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.
3. A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.
4. A request or notice by the seller under paragraph 2 or 3 of this article is not effective unless received by the buyer.

Article 49

1. The buyer may declare the contract avoided:

   (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

   (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph 1 of article 47 or declares that he will not deliver within the period so fixed.

2. However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

   (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

   (b) in respect of any breach other than late delivery, within a reasonable time:

      (i) after he knew or ought to have known of the breach;

      (ii) after the expiration of any additional period

of time fixed by the buyer in accordance with paragraph 1 of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph 2 article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming foods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

1. If the seller delivers only a party of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

2. The buyer may declare the contract avoided in its entirely only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

1. If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

2. If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

Chapter III
Obligations Of The Buyer

Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Section I
Payment of the price

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicity fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

Article 57

1. If the buyer is not bound to pay the price at any other particular place, he must pay it to seller:

   (a) at the seller's place of business; or

   (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

2. The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

1. If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for

handing over the goods or documents.

2. If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

3. The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II
Taking delivery

Article 60

The buyer's obligation to take delivery consists:

(a) in doing all the acts which could reasonably be

expected of him in order to enable the seller to make delivery; and

(b) in taking over the goods.

Section III
Remedies for breach of contract by the buyer

Article 61

1. If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

   (a) exercise the rights provided in articles 62 to 65;

   (b) claim damages as provided in articles 74 to 77.

2. The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

3. No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is

inconsistent with this requirement.

Article 63

1. The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.
2. Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

1. The seller may declare the contract avoided:

   (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

   (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph 1 of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

2. However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

   (a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

   (b) in respect of any breach other than late performance by the buyer, within a reasonable time:

      (i) after the seller knew or ought to have known of the breach; or

      (iii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph 1 of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

1. If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller

may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

2. If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller binding.

Chapter V
Passing Of Risk

Article 66

Loss of or damage to the gods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

1. If the contact of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for

transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

2. Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by marking on the goods by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage., Nevertheless, if at the time of the conclusion of the control of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the

risk of the seller.

Article 69

1. Inc cases not within article 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.
2. However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place,
3. If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contact.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

Chapter V
Provisions Common To The Obligations Of The Seller And Of The Buyer

Section I
Anticipatory breach and installment Contracts

1. A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of this obligations as a result of:

   (a) a serious deficiency in his ability to perform or in his credit-worthiness; or

   (b) his conduct in preparing to perform or in performing the contract.

2. If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

3. A party suspending performance whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

1. If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.
2. It time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.
3. The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

1. In the case of a contract for delivery of goods by instilments, if the failure of one party to perform any of his obligation in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may

declare the contract avoided with respect to that instalment.

2. If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

3. A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II
Damages

Article 74

Damages for breach of contract by one party consists of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss

which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

1. If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time

of such taking over shall be applied instead of the current price at the time of avoidance.

2. For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If the fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III
Interest

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages

recoverable under article 74.

Section IV
Exemptions

Article 79

1. A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

2. If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

   (a) he is exempt under the preceding paragraph; and

   (b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

3. The exemption provided by this article has effect for the period during which the impediment exists.

4. The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.
5. Nothing in this article prevents either party from exercising any rights other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V
Effect of avoidance

Article 81

1. Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the

parties consequent upon the avoidance of the contract.

2. A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parries are bound to make restitution, they must do so concurrently.

Article 82

1. The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

2. The preceding paragraph does not apply:

   (a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

   (b) if the goods or part of the goods have perished or deteriorated as a result of the examination provide for in article 38; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

1. If the seller is bound to refund the price, he must also pay interest, on it, from the date on which the price was paid.
2. The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

   (a) if he must make restitution of the goods or part of them; or

   (b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of

all or part of the goods substantially in the condition in which he received them, but has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI
Preservation of the goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the gods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

1. If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by

the seller.

2. If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

1. A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking

possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

2. If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.
3. A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

Part IV
Final Provisions

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Conventions.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

1. This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States which are not signatory States from the date it is open for signature.
4. Instruments of ratification, acceptance approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

1. A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this convention or that it will not be bound by Part III of this Conventions.
2. A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph 1 of Article 1 of this Convention in respect of matters governed by the Part to Which the declaration applies.

Article 93

1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, an may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 94

1. Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply toe contracts of sale or to their formation where the parties have their places of business in those States., Such declarations may be made jointly or by reciprocal unilateral declarations.

2. A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one of more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

3. If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph 1, provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that is will not be bound by subparagraph 1 (b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires

contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or part 11 of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

1. Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.
2. Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.
3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94

take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

4. Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

1. This Convention enters into force, subject to the provisions of paragraph 6 of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth

instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph 6 of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. A State which ratifies, accepts, approves or accedes to this convention and is a party to either or both the Convention relating to Uniform Law on the Formation of Contracts for the International Sale of Goods done at the Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the international Sale of Good done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the

1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

4. A State part to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

5. A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or had declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

6. For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such

denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

Article 100

1. This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph 1 (a) or the Contracting State referred to in subparagraph 1 (b) of article 1.
2. This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph 1 (a) or the Contracting State referred to in subparagraph 1 (b) of article 1.

Article 101

1. A Contracting State many denounce this

Convention, or Part II or part III of the Convention, by a formal notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Done at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Annex (4)
Unidroit Principles for International Commercial Contracts
Preamble
(Purpose of the Principles)

These Principles set forth general rules for international commercial contracts.

They shall be applied when the parties have agreed that their contract be governed by them.

They may be applied when the parties have agreed that their contract be governed by general principles of law, the lex mercatoria or the like.

They may provide a solution to an issue raised when it proves impossible to establish the relevant rule of the applicable law.

The may be used to interpret or supplement international uniform law instruments.

They may serve as a model for national and international legislators.

Chapter 1
General Provisions

Article 1.1
(Freedom of vontract)

The parties are free to enter into a contract and to determine its content.

Article 1.2
(No form required)

Nothing in these Principles requires a contract to be concluded in or evidenced by writing. It may be proved by any means, including witnesses..

Article 1.3
(Binding character of contract)

A contract validly entered into is binding upon the parties. It can only by modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

Article 1.4
(Mandatory rules)

Northing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are

applicable in accordance with the relevant rules of private international law.

Article 1.5
(Exclusion or modification by the parties)

The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.

Article 1.6
(Interpretation and supplementation of the Principles)

1. In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.

2. Issues within the scope of these Principles but not expressly settled by them are as far as possible to be settled in accordance with their underlying general principles.

Article 1.7
(Good faith and fair dealing)

1. Each party must act in accordance with god faith and fair dealing in international trade.

2. The parties may not exclude or limit this duty.

Article 1.8
(Usage and practices)

1. The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.
2. The parties are bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such a usage would be unreasonable.

Article 1.9
(Notice)

1. Where notice is required it may be given by an means appropriate to the circumstances.
2. A notice is effective when it reaches the person to whom it is given.
3. For the purpose of paragraph (2) a notice reaches a person when given to that person orally or delivered at that person's place of business or mailing address.
4. For the purpose of this article notice includes a

declaration, demand, request or any other communication of intention.

Article 1.10
(Definitions)

In these Principles

- "court" includes an arbitral tribunal;
- where a party has more than one place of business the relevant "place of business" is that which has the closes relationship[to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- "obligor" refers to the party who us to perform an obligation and "oblige" refers to the party who is entitled to performance of that obligation;
- "writing" means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

Chapter 2
Formation

Article 2.1
(Manner of formation)

A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

Article 2.2
(Definition of offer)

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

Article 2.3
(Withdrawal of offer)

1. An offer becomes effective when it reaches the offeree.
2. An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 2.4

(Revocation of offer)

1. Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance..
2. However, an offer cannot be revoked:

   (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

   (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 2.5

(Rejection of offer)

An offer is terminated when a rejection reaches the offeror.

Article 2.5

(Mode of acceptance)

1. A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

2. An acceptance of an offer becomes effective when the indication of assent reaches the offeror.
3. However, it, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.

Article 2.7
(Time of acceptance)

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

Article 2.8
(Acceptance within a fixed period of time)

1. A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such

date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by means of instantaneous communication begins to run from the moment that the offer reaches the offeree.

2. Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 2.9
(Late acceptance. Delay in transmission)

1. A late acceptance is nevertheless effective as an acceptance if without undue delay the eofferor so informs the offeree or gives notice to that effect.

2. If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an

acceptance unless, without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

Article 2.10
(Withdrawal of acceptance)

An acceptance my be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 2.11
(Modified acceptance)

1. A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

2. However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially after the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

Article 2.12
(Writings in confirmation)

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract additional or different terms, such term become part of the contract, unless they materially after the contract or the recipient, without undue delay, objects to the discrepancy.

Article 2.13
(Conclusion of contract dependent on agreement on specific matters or in a specific form)

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a specific form, no contract is concluded before agreement is reached on those matters or in that form.

Article 2.14
(Contract with terms deliberately left open)

1. If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent a contract from

coming into existence.

2. The existence of the contract is not affected by the fact that subsequently:

   (a) the parties reach no agreement on the term; or

   (b) the third person does not determine the term, provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

Article 2.15
(Negotiations in bad faith)

1. A party is free to negotiate and is not liable for failure to reach an agreement.
2. However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.
3. It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

Article 2.16
(Duty of confidentiality)

When information is given as confidential by

one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

Article 2.17
(Merger clauses)

A contract in writing which contains a clause indicting that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreement. However, such statement or agreements may be used to interpret the writing.

Article 2.18
(Written modification clauses)

A contact in writing which contains a clause requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has acted in reliance on that conduct.

Article 2.19

(Contracting under standard terms)

1. Where one party or both parties use standard terms in concluding a contract, the general rules on formation apply, subject to Articles 2.20-2.22.

2. Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.

Article 2.20

(Surprising terms)

1. No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.

2. In determining whether a term is of such a character regard is to be had to its content, language and presentation.

Article 2.21

(Conflict between standard terms and non-standard terms)

In case of conflict between a standard term and a term which is not a standard term the latter prevails.

Article 2.22
(Battle of forms)

Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicated in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

Chapter 3
Validity

Article 3.1
(Matters not covered)

These Principles do not deal with invalidity arising from:

(a) lack of capacity;

(b) lack of authority;

(c) immorality or illegality.

Article 3.2
(Validity of mere agreement)

A contract is concluded, modified or terminated by the mere agreement of the parties, without any

further requirement.

Article 3.3
(Initial impossibility)

1. The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract.
2. The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to which the contract relates does not affect the validity of the contract.

Article 3.4
(Definition of mistake)

Mistake is an erroneous assumption relating to facts or to law existing when the contract was concluded.

Article 3.5
(Relevant mistake)

1. A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party in error would only have concluded the contract on materially different

terms or would not have concluded it at all if the true state of affairs had been known, and

(a) the other party made the same mistake, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error;

or

(b) the other party had not at the time of avoidance acted in reliance on the contract.

2. However, a party may not avoid the contract if

(a) it was grossly negligent in committing the mistake; or

(b) the mistake relates to a matter in regard to with the risk of mistake was assumed or, having regard to the circumstances, should be bone by the mistaken party.

Article 3.6
(Error in expression or transmission)

An error occurring in the expression or transmission of a declaration is considered to be a mistake of the person from whom the declaration

emanated.

Article 3.7
(Remedies for non-performance)

A party is not entitled to avoid the contract on the ground of mistake if the circumstances on which that party relies afford, or could have afforded, a remedy for non-performance.

Article 3.8
(Fraud)

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

Article 3.9
(Threat)

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular,

a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or it is wrongful to use it as a means to obtain the conclusion of the contract.

Article 3.10
(Gross disparity)

1. A party may avoid the contract or an individual term of it if, at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to

   (a) the fact that the other party has taken unfair advantage of the first party's dependence, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill; and

   (b) the nature and purpose of the contract.

2. Upon the request of the party entitled to avoidance, a court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.

3. A court may also adapt the contract or term upon the request of the party receiving notice of

avoidance, provided that party informs the other party of its request promptly after receiving such notice and before the other party has acted in reliance on it. The provisions of Article 3.13(2) apply accordingly.

Article 3.11
(Third persons)

1. Where frau,-threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behavior or knowledge had been that of the party itself.
2. Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance acted in reliance on the contract.

Article 3.12
(Confirmation)

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the

period of time for giving notice of avoidance has begun to run, avoidance of the contract is excluded.

Article 3.13
(Loss of right to avoid)

1. If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has acted in reliance on a notice of avoidance.

2. After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

Article 3.14
(Notice of avoidance)

The right of a party to avoid the contract is exercised by notice to the other party.

Article 3.15
(Time limits)

1. Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.

2. Where an individual term of the contract may be avoided by a party under Article 3.10 the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.

Article 3.16
(Partial avoidance)

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.

Article 3.17
(Retroactive effect of avoidance)

1. Avoidance takes effect retroactively.

2. On avoidance either party may claim restitution of whatever it has supplied under the contract or the

part of it avoided, provided that it concurrently makes restitution of whatever it has received under the contract or the part of it avoided or, if it cannot make restitution in kind, it makes an allowance for what it has received.

Article 3.18
(Damages)

Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.

Article 3.19
(Mandatory character of the provisions)

The provisions of this Chapter are mandatory, except insofar as they relate to the binding force of mere agreement, initial impossibility or mistake.

Article 3.20
(Unilateral declarations)

The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.

Chapter 4
Interpretation

Article 4.1
(Intention of the parties)

1. A contract shall be interpreted according to the common intention of the parties.
2. If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

Article 4.2
(Interpretation of statements and other conduct)

1. The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.
2. If the preceding paragraph is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

Article 4.3
(Relevant circumstances)

In applying Articles 4.1 and 4.2, regard shall be had to all the circumstances, including

(a) preliminary negotiations between the parties;

(b) practices which the parties have established between themselves;

(c) the conduct of the parties subsequent to the conclusion of the contract;

(d) the nature and purpose of the contract;

(e) the meaning commonly given to terms expressions in the trade concerned;

(f) usages.

Article 4.4
(Reference to contract or statement as a whole)

Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.

Article 4.5
(All terms to be given effect)

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

Article 4.6
(Contra preference rule)

If contract terms supplied by one party are unclear, an interpretation against that party is preferred.

Article 4.7
(Linguistic discrepancies)

Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.

Article 4.8
(Supplying an omitted term)

1. Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be

supplied.

2. In determining what is an appropriate term regard shall be had, among other factors, to

   (a) the intention of the parties;

   (b) the nature and purpose of the contract;

   (c) good faith and fair dealing;

   (d) reasonableness.

Chapter 5
Content

Article 5.1
(Express and implied obligations)

The contractual obligations of the parties may be express or implied.

Article 5.2
(Implied obligations)

Implied obligations from

(a) the nature and purpose of the contract;

(b) practices established between the parties and usages;

(c) good faith and fair dealing;

(d) reasonableness.

Article 5.3
(Co-operation between the parties)

Each party shall co-operate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.

Article 5.4
(Duty to achieve a specific result.
Duty of best efforts)

1. To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.
2. To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.

Article 5.5
(Determination of kind of duty involved)

In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to

(a) the way in which the obligation is expressed in the contract;

(b) the contractual price and other terms of the contract;

(c) the degree of risk normally involved in achieving the expected result;

(d) the ability of the other party to influence the performance of the obligation.

Article 5.6
(Determination of quality of performance)

Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render a performance of a quality that is reasonable and not less than average in the circumstances.

Article 5.7
(Price determination)

1. Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable

circumstances in the trade concerned or, if no such price is available, to reasonable price.

2. Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.
3. Where the price is to be fixed by a third person, and that person cannot or will not do so, the price shall be a reasonable price.
4. Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

Article 5.8
(Contract for an indefinite period)

A contract for an indefinite period m may be ended by either party by giving notice a reasonable time in advance.

Chapter 6
Performance
Section 1
Performance in General

Article 6.1.1
(Time of performance)

A party must perform its obligations:

(a) if a time is fixed by or determinable from the contract, at that time;

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the other party is to chose a time;

(c) in any other case, within a reasonable time after the conclusion of the contract.

Article 6.1.2
(Performance at one time or in installments)

In cases under Article 6.1.1 (b) or (c) , a party must perform is obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.

Article 6.1.3
(Partial performance)

1. The oblige may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance, unless the oblige has no legitimate interest in so doing.
2. Additional expenses caused to the oblige by partial performance are to be borne by the obligor without prejudice to any other remedy.

Article 6.1.4
(Order of performance)

1. To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise.
2. To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.

Article 6.1.5
(Earlier performance)

1. The oblige may reject an earlier performance

unless it has no legitimate interest in so doing.

2. Acceptance by a party on an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations.

3. Additional expenses caused to the oblige by earlier performance are to be borne by the obligor, without prejudice to any other remedy.

Article 6.1.6
(Place of performance)

1. If the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform:

   (a) a monetary obligation, at the obligee's place of business;

   (b) any other obligation, at its own place of business.

2. A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.

Article 6.1.7
(Payment by cheque or other instrument)

1. Payment may be made in any form used in the ordinary course of business at the place for payment.

2. However, an oblige who accept, either by virtue of paragraph (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honoured.

Article 6.1.8
(Payment by funds transfer)

1. Unless the oblige has indicate a particular account, payment may be made by a transfer to any of the financial institutions in which the oblige has made it known that it has an account.

2. In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.

Article 6.1.9
(Currency of payment)

1. If a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the obligor in the currency of the place for

payment unless.

(a) that currency is not freely convertible; or

(b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.

2. If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the oblige may require payment in the currency of the place for payment, even in the case referred to in paragraph (1)(b).

3. Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due.

4. However, if the obligor has not paid at the time when payment is due, the oblige may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.

Article 6.1.10
(Currency not expressed)

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.

Article 6.1.11
(Costs of performance)

Each party shall bear the costs of performance of its obligations.

Article 6.1.12
(Imputation of payments)

1. An obligor owing several monetary obligations to the same oblige may specify at the time payment the debt to which it intends the payment to be applied. However, the payment discharges first any expenses, then interest due and finally the principal.

2. If the obligor makes no such specification, the oblige may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment; provided that the obligation is due and undisputed.

3. In the absence of imputation under paragraphs (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria and in the order indicated:

   (a) an obligation which is due or which is the first to fall due;

(b) the obligation for which the oblige has least security;

(c) the obligation which is the most burdensome for the obligor;

(d) the obligation which has arisen first.

If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.

Article 6.1.13
(Imputation of non-monetary obligations)

Article 6.1.12 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

Article 6.1.14
(Application for public permission)

Where the law of a State requires public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise:

(a) if any one party has its place of business in that State, that party shall take the measures necessary to obtain the permission;

(b) in any other case the party whose performance

requires permission shall take the necessary measures.

Article 6.1.15
(Procedure in applying for permission)

1. The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.
2. That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay.

Article 6.1.16
(Permission neither granted nor refused)

1. If, notwithstanding the fact the party responsible has taken all measures required, permission is neither granted nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.
2. Where the permission affects some terms only, paragraph (a) does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is

refused.

Article 6.1.17
(Permission refused)

1. The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.
2. Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

Section 2
Hardship

Article 6.2.1
(Contract to be observed)

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.

Article 6.2.2
(Definition of hardship)

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and

(a) the events occur or become known to the disadvantaged party after the conclusion of the contract;

(b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;

(c) the events are beyond the control of the disadvantaged party; and

(d) the risk of the events was not assumed by the disadvantaged party.

Article 6.2.3
(Effects of hardship)

1. In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.

2. The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance.

3. Upon failure to reach agreements within a reasonable within a reasonable time either party may resort to the court.

4. If the court finds hardship it may, if reasonable,

   (a) terminate the contract at a date and on terms to be fixed; or

   (b) adapt the contract with a view to restoring its equilibrium.

Chapter 7
Non-Performance

Section 1
Non-Performance in General

Article 7.1.1
(Non-performance defined)

Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance.

Article 7.1.2
(Interference by the other party)

A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event as to which the first party bears the risk.

Article 7.1.3
(Withholding performance)

1. Where the parties are to perform simultaneously, either party may withhold performance until the other-party tenders its performance.
2. Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.

Article 7.1.4
(Cure by non-performing party)

1. The non-performing party may, at its own expense, cure any non-performance, provided that:

   (a) without undue delay, it gives notice indicating the proposed manner and timing of the cure;

   (b) cure is appropriate in the circumstances;

(c) the aggrieved party has no legitimate interest refusing cure; and

(d) cure is effected promptly.

2. The right to cure is not precluded by notice of termination.
3. Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the non-performing party's performance are suspended until the time for cure has expired.
4. The aggrieved party may withhold performance pending cure.
5. Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

Article 7.1.5
(Additional period for performance)

1. In a case of non-performance the aggrieved party may be notice to the other party allow an additional period of time for performance.
2. During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not

resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Chapter.

3. Where in a case of delay in performance which is not fundamental the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of reasonable length it shall be extended to a reasonable period allowed is not of reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.

4. Paragraph (3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.

Article 7.1.6
(Exemption clauses)

A clause which limits or excludes one party's liability for non-performance or which permits one party one party to render performance substantially different from what the other party reasonably expected may not be invoked if it would be grossly unfair to so, having regard to the purpose of the contract.

Article 7.1.7
(Force majeure)

1. Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
2. When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.
3. The party who fails to perform must give notice to

the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

4. Nothing in this article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.

Section 2
Right to Performance

Article 7.2.1
(Performance of monetary obligation)

Where a party who is obliged to pay money does not do so, the other party may require payment.

Article 7.2.2
(Performance of non-monetary obligation)

Where a party two owes an obligation other than one to pay money does not perform, the other party may require performance, unless

(a) performance is impossible in law or in fact;

(b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;

(c) the party entitled to performance may reasonably obtain performance from another source;

(d) performance is of an exclusively personal character; or

(e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

Article 7.2.3
(Repair and replacement of defective performance)

The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 7.2.1 and 7.2.2 apply accordingly.

Article 7.2.4
(Judicial penalty)

1. Where the court orders a party to perform, it may also direct that this party pay a penalty if it does not comply with the order.

2. The penalty shall be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any claim for damages.

Article 7.2.5
(Change of remedy)

1. An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.

2. Where the decision of a court for performance of a non-monetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.

Section 3
Termination

Article 7.3.1
(Right to terminate the contract)

1. A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.

2. In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether

   (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;

   (b) strict compliance with the obligation which has not been performed is of essence under the contract;

   (c) the non-performance is intentional or reckless;

   (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;

   (e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.

3. In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed it under Article

7.1.5 has expired.

Article 7.3.2
(Notice of termination)

1. The right of a party to terminate the contract is exercised by notice to the other party.
2. If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance.

Article 7.3.3
(Anticipatory non-performance)

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

Article 7.3.4
(Adequate assurance of due performance)

A party who reasonably believes that three will be fundamental non-performance by the other paty may demand adequate assurance of due performance

and may meanwhile withhold its own performance. Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract.

Article 7.3.5
(Effects of termination in general)

1. Termination of the contract releases both parties from their obligation to effect and to receive future performance.
2. Termination does not preclude a claim for damages for non-performance.
3. Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

Article 7.3.6
(Restitution)

1. On termination of the contract either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable.

2. However, if performance of the contract has extended over a period of time and the contract is divisible, such restitution can only be claimed for the period after termination has taken effect.

Section 4
Damages

Article 7.4.1
(Right to damages)

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under these Principles.

Article 7.4.2
(Full compensation)

1. The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.

2. Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.

Article 7.4.3
(Certainty of harm)

1. Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.
2. Compensation may be due for the loss of change in proportion to the probability of its occurrence.
3. Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.

Article 7.4.4
(Foresee ability of harm)

The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

Article 7.4.5
(Proof of harm in case of replacement transaction)

Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price

and the price of the replacement transaction as well as damages for any further harm.

Article 7.4.6
(Proof of harm by current price)

1. Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.
2. Current price is the price generally charged for-goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a refernce.

Article 7.4.7
(Harm due in part to aggrieved party)

Where the harm is due in part to an act or omission of the aggrieved party or to another event as to which that party bears the risk, the amount of

damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties.

Article 7.4.8
(Mitigation of harm)

1. The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.
2. The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

Article 7.4.9
(Interest for failure to pay money)

1. If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.
2. The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at the place, than the

same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

3. The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.

Article 7.4.10

(Interest on damages)

Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

Article 7.4.11

(Manner of monetary redress))

1. Damages are to be paid in a lump sum. However, they may be payable in instalments where the nature of the harm makes this appropriate.
2. Damages to be paid ininstalments may be indexed.

Article 7.4.12

(Currency in which to assess damages)

Damages are to be assessed either in the currency in which the monetary obligation was

expressed or in the currency in which the harm was suffered, whichever is more appropriate.

Article 7.4.13
(Agreed payment for non-performance)

1. Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm.
2. However, hot withstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.



Annex (5)

اتفاقية واشنطن لعام 1965
الخاصة بتسوية المنازعات الناشئة عن الاستثمار
بين الدول ورعايا دول أخرى[1]

إن الدول المتعاقدة وهى تأخذ فى الاعتبار الحاجة إلى تعاون دولى فى مجال التنمية الاقتصادية والدور الذى يلعبه الاستثمار الدولى الخاص فى هذا المجال.

واحتمال قيام منازعات من وقت لآخر تتعلق بهذا الاستثمار بين الدول المتعاقدة ورعايا الدول المتعاقدة الأخرى.

وتقر أنه بينما تكون هذه المنازعات عادة موضوعاً لإجراءات قانونية محلية فإن الوسائل الدولية لحل المنازعات قد تكون أنسب فى حالات معينة.

وتعلق أهمية خاصة على إتاحة الوسائل اللازمة للتوفيق والتحكيم الدولى لتمكين الدول المتعاقدة ورعايا الدول المتعاقدة الأخرى من عرض هذه المنازعات عليه إذا رغبوا فى ذلك.

وترغب فى إقامة مثل هذه الوسائل تحت رعاية البنك الدولى للإنشاء والتعمير.

وترى أن قبول الطرفين العرض قبل هذه المنازعات على وسائل التوفيق والتحكيم يشكل اتفاقاً يرتبط به وأن أى توصية للقائمين بالتوفيق يجب أن تؤخذ فى الاعتبار وأن أى قرار بالتحكيم يكون ملزما للطرفين.

وأن أية دولة متعاقدة لا تعتبر بمجرد التصديق أو القبول أو

(1) الجريدة الرسمية، العدد رقم 45، الصادر فى 11 نوفمبر سنة 1971.

الموافقة على هذه الاتفاقية ملتزمة بعرض أى نزاع على التوفيق والتحكيم ما لم توافق صراحة على ذلك.

قد وافقت على الآتى:

الباب الأول
المركز الدولى لتسوية المنازعات
الناشئة عن الاستثمار
القسم الأول
الإنشاء والتنظيم

مادة (1)

1 – يتم إنشاء المركز الدولى لفض المنازعات الناشئة عن الاستثمار (ويطلق عليه فيما بعد المركز).

2 – الغرض من المركز هو توفير الوسائل اللازمة للتوفيق والتحكيم لفض المنازعات الخاصة بالاستثمار بين الدول المتعاقدة ورعايا الدول المتعاقدة الأخرى طبقا لأحكام هذه الاتفاقية.

مادة (2)

سوف يكون مقر المركز المكتب الرئيسى للبنك الدولى للإنشاء والتعمير (يطلق عليه فيما بعد البنك) ويجوز نقل المقر إلى مكان آخر بقرار من المجلس الإدارى يصدر بأغلبية ثلثى أعضائه.

مادة (3)

سوف يكون للمركز مجلس إدارى وسكرتارية كما سيشكل هيئة للتوفيق وهيئة أخرى للتحكيم.

القسم الثانى
المجلس الإدارى

مادة (4)

1 – يتكون المجلس الإدارى من ممثل واحد لكل من الدول المتعاقدة وممثل مناوب يمثله فى حالة غيابه عن الاجتماع أو عدم قدرته على العمل.

2 – يجوز لمحافظ البنك ونائبه اللذان تعينهما الدولة المتعاقدة أن يمثلا الدولة بحكم وظيفتهما ما لم ينص على خلاف ذلك.

مادة (5)

يصبح رئيس البنك بحكم وظيفته رئيسا للمجلس الإدارى (يطلق عليه فيما بعد الرئيس). ولا يكون له الحق فى التصويت وفى حالة غيابة أو فى حالة عدم قدرته على العمل أو فى حالة خلو وظيفة رئيس البنك يحل محله الشخص الذى يقوم بعمل رئيس البنك.

مادة (6)

1 – مع عدم الإخلال بالسلطات والوظائف المخولة له عن طريق أحكام هذه الاتفاقية يقوم المجلس الإدارى بالآتى:

أ – وضع التنظيمات الإدارية والمالية للمركز.

ب – وضع القواعد الخاصة بمنظمة التوفيق أو التحكيم.

ج – وضع القواعد المتعلقة بإجراءات التوفيق وقواعد التحكيم. (وقد أطلق عليها فيما بعد قواعد التوفيق وقواعد التحكيم).

د – الاتفاق مع البنك لاستخدام تسهيلات وخدمات البنك الإدارية.

هـ - تحديد شروط الخدمة بالنسبة للسكرتير العام وتحديدها لأى نائب له.

و – وضع الميزانية السنوية للدخل والمنصرف الخاصة بالمركز.

ز – الموافقة على التقرير السنوى الخاص بعمليات المركز.

تتم الموافقة على القرارات المشار إليها أعلاه فى الفقرات الفرعية (أ)، (ب)، (ج)، (و) بأغلبية ثلثى أعضاء المجلس الإدارى.

2 – يقوم المجلس الإدارى بتعيين اللجان التى يراها ضرورية.

3 – يمارس المجلس الإدارى أى سلطات أخرى ويقوم بأى وظائف أخرى يرى أنها ضرورية لتنفيذ أحكام هذه الاتفاقية.

مادة (7)

1 – يعقد المجلس الإدارى اجتماعا سنويا واجتماعات أخرى يقوم المجلس بتحديدها أو يدعو إليها رئيس المجلس أو السكرتير العام تلبية لرغبة عدد لا يقل عن خمسة من أعضاء المجلس.

2 – يكون لكل عضو فى المجلس الإدارى صوت واحد ما لم يشترط غير ذلك كما هو موضح فيما بعد – ويتم البت فى المسائل المعروضة على المجلس بأغلبية الأصوات الصحيحة.

3 – يكتمل النصاب القانونى لأى اجتماع للمجلس الإدارى بحضور أغلبية أعضائه.

4 – يمكن للمجلس الإدارى بأغلبية ثلثى أعضائه إصدار قرار من شأنه تمكين الرئيس من عرض أى قرار للتصويت دون دعوة المجلس إلى الاجتماع ويعتبر التصويت صحيحا لو أن غالبية أصوات

أعضاء المجلس أعطيت فى الوقت المحدد فى القرار المذكور.

مادة (8)

يقوم كل من أعضاء المركز الإدارى والرئيسى بالخدمة بدون مقابل نقدى من المركز.

القسم الثالث

السكرتارية

مادة (9)

تتكون السكرتارية من السكرتير العام وواحد أو أكثر من السكرتاريين العامين المساعدين ومن هيئة موظفين.

مادة (10)

1 – ينتخب كل من السكرتير العام والسكرتير العام المساعد عن طريق المجلس الإدارى بغالبية ثلثى أعضائه بناء على ترشيح الرئيس لمدة خدمة لا تتجاوز ست سنوات كما يمكن إعادة انتخابه وبعد استشاره أعضاء المجلس الإدارى يقوم الرئيس بتقديم واحد أو أثنين من المرشحين لكل وظيفة.

2 – إن وظيفة كل من السكرتير العام والسكرتير العام المساعد سوف لا تتفق وممارسة أى منصب سياسى، ولا يجوز لكل من السكرتير العام والسكرتير العام المساعد أن يشغل أى وظيفة أو يعمل فى مهنة أخرى دون موافقة المجلس الإدارى.

3 – وفى حالة غياب السكرتير العام أو فى حالة عدم مقدرته على العمل أو فى أثناء خلو منصب السكرتير العام يقوم السكرتير العام المساعد بعمله.

وفى حالة وجود أكثر من سكرتير عام مساعد يقوم المجلس الإدارى مقدما بوضع الترتيب الذى يتبع فيما بينهم للقيام بعمل السكرتير العام.

مادة (11)

يكون السكرتير العام بمثابة الممثل القانونى والموظف الرئيس للمركز وسوف يكون مسئولا عن إدارته بما فى ذلك تعيين الموظفين طبقا لأحكام هذه الاتفاقية وطبقا للقواعد التى يضعها المجلس الإدارى، وسوف يقوم بعمل المسجل وتخول له سلطة التصديق على قرارات التحكيم الصادرة بموجب هذه الاتفاقية، كما يصدق على الصور المستخرجة منها.

القسم الرابع

هيئات التوفيق والتحكيم

مادة (12)

تتكون كل من هيئة التوفيق وهيئة التحكيم من الأفراد والمؤهلين لذلك والذين يتم تعيينهم بالطريقة المبينة فيما بعد والذين على استعداد للقيام بمهام وظائفهم.

مادة (13)

1 – يجوز لكل دولة متعاقدة أن تعين لكل من الهيئتين أربعة أشخاص من مواطنيها بيد أنه من الممكن أن يكونوا من غير مواطنيها.

2 – للرئيس أن يعين عشرة أشخاص لكل هيئة، ويكون الأشخاص المعينون بهذه الصفة كل منهم من جنسية تختلف عن الآخر.

مادة (14)

1 – يكون الأشخاص المعينون للخدمة فى الهيئة على قدر عظيم من الأخلاق وأن يكون معترفا بكفاءتهم فى مجال القانون والتجارة والصناعة والمال بحيث يمكن الاعتماد عليهم فى ممارسة الحكم على الأمور حكما مستقلا وتشكل كفاءتهم فى مجال القانون أهمية خاصة فى حالة الأشخاص أعضاء هيئة التحكيم.

2 – وعندما يقوم الرئيس بتعيين أشخاص للخدمة فى الهيئة يجب أن يبذل علاوة على ذلك اهتماما كافيا للتأكد من أن التمثيل فى الهيئة يتفق مع المبادئ القانونية الأساسية والأشكال العامة للنشاط الاقتصادى فى العالم.

مادة (15)

1 – يقوم أعضاء الهيئة بالخدمة لمدة ست سنوات قابلة للتجديد.

2 – وفى حالة وفاة أو استقالة أحد أعضاء الهيئة يكون للسلطة التى قامت بتعيين العضو الحق فى أن تعين شخصا آخر يقوم بالخدمة للمدة الباقية للعضو الذى توفى أو استقال.

3 – يواصل أعضاء الهيئة أداء وظائفهم إلى أن يتم تعيين خلفائهم.

مادة (16)

1 – يجوز أن يخدم الشخص فى كل من الهيئتين.

2 – إذا كان الشخص قد عين فى تلك الهيئة عن طريق أكثر من دولة متعاقدة أو عن طريق الرئيس أو أكثر من دولة متعاقدة يعتبر أنه قد تم تعيينه عن طريق السلطة التى عينته أولا وإذا كانت تلك

السلطة هى الدولة التى ينتمى إليها اعتبرت هذه الدولة هى القائمة بتعيينه.

القسم الخامس

تمويل المركز

مادة (17)

إذا زادت نسبة المصروفات عن قيمة الرسوم المحصلة نتيجة استخدام خدمات المركز أو إذا زادت المصروفات عن قيمة الإيرادات الأخرى تتحمل الدولة المتعاقدة الأعضاء فى البنك هذه الزيادة كل بنسبة مساهمتها فى رأس مال البنك كما تتحملها أيضا الدولة المتعاقدة غير الأعضاء فى البنك طبقا للشروط والأوضاع التى يقرها المجلس الإدارى.

القسم السادس

النظام الأساسى والحصانات والامتيازات

مادة (18)

يكون للمركز الشخصية الاعتبارية القانونية الدولية، وتتضمن الصفة القانونية للمركز مايلى:

أ – التعاقد.

ب – الحق فى الحيازة والتصرف فى الممتلكات المنقولة وغير المنقولة.

ج – وضع الإجراءات القانونية.

مادة (19)

تمكينا للمركز من أداء وظائفه يتمتع أعضاء المركز فى

أراضـى كـل دولـة متعاقدة بالحصانات والامتيـازات الـواردة فـى هذا الفصل.

مادة (20)

يتمتع المركز وأصوله بحصانة من كل الإجراءات القانونيـة مـا لم يتنازل المركز عن هذه الحصانة.

مادة (21)

يتمتـع الـرئيس وأعـضاء المجلـس الإدارى والأعـضاء القـائمين بأعمـال التوفيـق أو التحكيم أو أعضاء اللجـان المعينـين بموجب الفقرة (3) من المادة 52 وموظفة السكرتارية بالآتى:

أ – يتمتعون بالحصانة من إعلان الدعوى القانونيـة فيما يتعلق بالأعمال التى يقومون بها عند أداء وظائفهم، ما لم يتنـازل المركز عن منحهم هذه الحصانة.

ب – وما لم يكونوا من الرعايا المحليين فسوف يتمتعون بنفس الحـصانات ضـد قيـود الهجـرة والتزامـات تـسجيل أسـماء الغربـاء والتزامات الخدمة القومية وتمنح نفس التسهيلات بالنسبة لقيود النقد كما يلاقوا نفس المعاملة فيما يتعلق بتسهيلات السفر وهى نفس التسهيلات التى تمنحها الدول المتعاقدة للممثلين والموظفين الرسميين والموظفين الذين يمتعون بنفس المستوى لأى دولة متعاقدة أخرى.

مادة (22)

تطبـق أحكـام المـادة (21) علـى الأشـخاص القـائمين بتنفيـذ الإجراءات فى ظل هذه الاتفاقية كأطراف نزاع والوكلاء والمستشارين والمحامين والشهود أو الخبراء بشرط أن يطبق عليهم مع ذلك أحكام الفقرة الفرعية (ب) التى تطبق عليهم فقط فى حالـة سفرهم من والـى

البلد المقيمين فيها والمكان الذى يتم فيه إجراءات التنازع.

مادة (23)

1 – لا يمكن التعدى على أرشيف المركز أينما وجد.

2 – فيما يتعلق باتصالات المركز الرسمية ينبغى أن يلاقى من كل دولة من الدول المتعاقدة معاملة لا تقل عن تلك التى تلاقيها أى منظمة دولية أخرى.

مادة (24)

1 – تكون أصول المركز وممتلكاته ودخله ومشاريعه وعملياته المصرح بها فى ظل هذه الاتفاقية معفاة من كل الضرائب والرسوم الجمركية، كما يعفى المركز أيضا من مسئولية تحصيل أو دفع أية ضرائب أو رسوم جمركية.

2 – فيما عدا الرعايا المحليين لا تفرض ضريبة على أو بشأن المصاريف والمرتبات التى يدفعها المركز إلى الرئيس أو أعضاء المجلس الإدارى أو على أو بشأن المصاريف والمرتبات أو أية مبالغ أخرى يدفعها المركز إلى موظفى وعمال السكرتارية.

3 – لن تفرض أية ضريبة على الأتعاب أو مقابل المصروفات التى يحصل عليها الأشخاص الذين يقومون بعملية التوفيق والتحكيم أو أعضاء اللجنة المعينين طبقا للفقرة (3) من المادة (52) بمقتضى الإجراءات الواردة فى ظل هذه الاتفاقية إذا كان السند القانونى الوحيد لمثل هذه الضريبة هو مقر المركز أو المكان الذى تتم فيه هذه الإجراءات أو المكان الذى تدفع فيه مثل هذه الأتعاب أو مقابل النفقات.

الباب الثانى

الاختصاص القانونى

مادة (25)

1 – يمتد الاختصاص القانونى للمركز إلى أية خلافات قانونية تنشأ مباشرة عن استثمار بين دولة متعاقدة (أو إقليم فرعى أو أى وكالة تابعة للعضو المتعاقد سبق أن عينته الدولة المتعاقدة إلى المركز) وبين مواطن من دولة أخرى متعاقدة، وبشرط أن يوافق طرفى النزاع كتابة على تقديمها للمركز، وعند إعطاء الطرفان موافقتهما لا يحق لأى من الطرفين أن يسحب هذه الموافقة دون قبول من الطرف الآخر.

2 – يقصد بمواطن الدولة المتعاقدة الأخرى مايأتى:

أ – أى شخص طبيعى يتمتع بجنسية دولة متعاقدة بخلاف الدولة طرف النزاع يوم اتفاق الأطراف على القيام بالتوفيق أو التحكيم لأى نزاع وكذا يوم تسجيل الطلب تطبيقا للفقرة (3) من المادة (28) أو الفقرة (3) من المادة (36) ولكنه لا يشمل أى شخص يكون قد حصل فى أى من التاريخين المذكورين على جنسية الدولة طرف النزاع.

ب – أى شخص اعتبارى حاصل على جنسية دولة متعاقدة غير طرف فى النزاع فى تاريخ موافقة الأطراف على تقديم طلب التوفيق أو التحكيم للنزاع وأى شخص اعتبارى يتمتع بجنسية دولة متعاقدة طرف النزاع فى هذا التاريخ والذى نتيجة لسياسة معاملة الأجانب، اتفق الطرفان على معاملته كمواطن لدولة متعاقدة أخرى تحقيقا لأغراض هذه الاتفاقية.

3 – تستلزم موافقة الإقليم الفرعى أو الوكالة فى الدولة

المتعاقدة أخذ موافقة تلك الدولة التابع لها هذا الإقليم أو الوكالة إلا إذا أخطرت الدولة المركز أنه لا داعى للحصول منها على مثل هذه الموافقة.

4 – يجوز لكل دولة متعاقدة – عند التصديق أو القبول أو اعتماد هذه الاتفاقية فى أى وقت لاحق لذلك، أن تخطر المركز بنوع أو أنواع النزاع التى ترى عرضها أو عدم عرضها طبقا لاختصاصات المركز، ومن ثم يتعين على السكرتير العام عرض هذا الإخطار على كافة الدول المتعاقدة ولن يشكل هذا الإخطار الموافقة المطلوبة فى الفقرة(1).

مادة (26)

تعتبر موافقة الأطراف على التحكيم فى ظل هذه الاتفاقية موافقة على استبعاد أى علاج آخر ما لم ينص على خلاف ذلك. ويجوز لأى طرف متعاقد المطالبة باستنفاد كافة سبل التسوية القانونية المحلية والإدارية كشرط لازم لقبولها التحكيم فى ظل هذه الاتفاقية.

مادة (27)

1 – لا يجوز للدولة المتعاقدة أن تعطى أى حماية دبلوماسية أو تقديم مطالبة دولية فيما يتعلق بالنزاع القائم بين أحد رعاياها وبين دولة أخرى متعاقدة تم الاتفاق بينهما على عرض أو القيام بعرض النزاع بينهما على التحكيم فى ظل هذه الاتفاقية، إلا فى حالة فشل الدولة الأخرى فى تسوية النزاع أو فى تنفيذ الحكم الصادر فى هذا النزاع.

2 – الحماية الدبلوماسية لأغراض الفقرة (1) لا تشمل بطريقة غير رسمية لتبادل الدبلوماسى وذلك لغرض واحد هو تسهيل فض النزاع.

الباب الثالث
التوفيق
القسم الأول
طلب التوفيق

مادة (28)

1 – لأى دولة متعاقدة أو أى مواطن بدولة متعاقدة ترغب فى إقامة إجراءات التوفيق تقديم طلب كتابى فى هذا الخصوص إلى السكرتير العام الذى يرسل نسخة من الطلب للطرف الآخر فى النزاع.

2 – ينبغى أن يتضمن الطلب كافة المعلومات الخاصة بعناصر النزاع وشخصية الأطراف وموافقتها على التوفيق تطبيقا لقواعد إجراءات التوفيق أو إجراءات التحكيم.

3 – يقوم السكرتير العام بتسجيل الطلب ما لم يتبين له – على أساس المعلومات التى اشتمل عليها الطلب – أن النزاع يبدو بجلاء خارج عن اختصاص المركز وعندئذ يتعين عليه إخطار طرفى النزاع بقيامه أو رفض تسجيل الطلب.

القسم الثانى
تشكيل لجنة التوفيق

مادة (29)

1 – تشكل لجنة التوفيق (المشار إليها فيما بعد باسم اللجنة) فورا بعد تمام تسجيل طلب التوفيق تطبيقا للمادة (28).

2 – (أ) تشكل اللجنة من محكم واحد للتوفيق أو أى عدد فردى من الموفقين يتم تعيينهم بموافقة الأطراف المتنازعة.

ب – إذا لم يتفق الطرفان على عدد الموفقين وعلى طريقة تعيينهم تشكل اللجنة من ثلاثة موفقين يقوم كل طرف بتعيين واحدا ويتم تعيين الموفق الثالث الذى يتولى فى هذه الحالة رئاسة اللجنة بالاتفاق بين طرفى النزاع.

مادة (30)

إذا لم تشكل اللجنة خلال (90) يوما بعد إرسال إخطار بتسجيل الطلب من جانب السكرتير العام وفقا للفقرة (3) للمادة (28) أو بعد فترة أخرى يوافق عليها الطرفان يقوم الرئيس بناء على طلب أى من الطرفين وبعد مشاورتهما كلما أمكن بتعيين الموفق أو الموفقين الذين لم يتم تعيينهم بعد.

مادة (31)

يجوز تعيين الموفقين من خارج قائمة الموفقين إلا فى حالة التعيينات التى تتم من جانب الرئيس تطبيقا للمادة (30).

2 – ينبغى أن تتوافر فى الموفقين من خارج قائمة الموفقين كافة الصفات المبينة فى الفقرة (1) للمادة (14).

القسم الثالث

إجراء التوفيق

مادة (32)

1 – اللجنة هى التى تحدد اختصاصاتها.

2 – أى اعتراض مقدم من أحد طرفى النزاع على أساس أن النزاع المذكور لا يقع فى اختصاص المركز، أو لأية أسباب أخرى، لا يدخل فى اختصاص اللجنة، تقرر اللجنة ما إذا كانت تقوم ببحث هذا

الاعتراض على اعتبار أنه مسالة مبدئية منفصلة أو تقرر ضمه إلى عناصر النزاع.

مادة (33)

يتم السير فى أى إجراءات للتوفيق طبقا لأحكام هذا القسم وتبعا لقواعد التوفيق السارية يوم الاتفاق على التوفيق ما لم تتفق الأطراف المعنية على خلاف ذلك، وإذا ظهرت أى مشكلة تتعلق بالإجراءات لم يتناولها هذا القسم أو قواعد التوفيق أو أية قواعد أخرى يتم الاتفاق عليها بين الطرفين تقوم اللجنة باتخاذ ما تراه فى هذه المشكلة.

مادة (34)

1 – يكون من واجب اللجنة توضيح عناصر النزاع بين الأطراف وأن تحاول الوصول إلى شروط يقبلها الطرفان، وتحقيقا لهذا الغرض يجوز للجنة فى أى مرحلة من مراحل الإجراءات وكذا من حين آخر أن توصى بوضع شروط للتسوية بين الطرفين ويقوم الطرفان بالتعاون فى إخلاص مع اللجنة لتمكينها من القيام بوظائفها وأخذ توصياتها بعين الاعتبار.

2 – إذا وصل الطرفان إلى اتفاق تقوم اللجنة بعمل محضر تثبت فيه عناصر النزاع وتثبت فيه كذلك الاتفاق الذى وصل إليه الطرفان، ولو تبين للجنة فى مرحلة من مراحل الإجراءات أنه ليس هناك احتمال للاتفاق بين الطرفين تقوم اللجنة بإنهاء الإجراءات وتعد تقريرا تبين فيه موضوع النزاع وتسجل فشل الطرفين للوصول إلى اتفاق وإذا لم يحضر أحد الطرفين أو لم يشترك فى الإجراءات، تقوم اللجنة بإنهاء هذه الإجراءات وتعد تقريرا تبين فيه عدم حضوره أو عدم اشتراك ذلك الطرف.

مادة (35)

فيما عدا ما قد يتفق عليه طرفى النزاع لأى منها عند اللجوء إلى إجراء آخر أو إلى تحكيم آخر أو إلى محكمة قانونية أخرى الاعتماد على أو الاستناد إلى آراء أبديت أو قرارات أو تصريحات أو عروض للتسوية صدرت عن الطرف الآخر للنزاع أو إلى تقرير أو توصية صدرت عن اللجنة.

الباب الرابع

التحكيم

القسم الأول

طلب التحكيم

مادة (36)

أى دولة متعاقدة أو مواطن فى دولة متعاقدة يرغب فى رفع دعوى التحكيم يتقدم بطلب كتابى بهذا الخصوص إلى السكرتير العام الذى يرسل بدوره نسخة منه إلى الطرف الآخر فى النزاع.

2 – ويجب أن يتضمن الطلب المعلومات المتعلقة بموضوع الخلاف وشخصية الأطراف وموافقتهم على التحكيم طبقا للائحة القانونية الخاصة بالدخول فى دعاوى التوفيق والتحكيم.

3 – يجب على السكرتير العام تسجيل الدعوى إلا إذا تراءى له بجلاء من خلال المعلومات التى تحتويها الدعوى أن النزاع يخرج عن اختصاص المركز. ويجب عندئذ إخطار الطرفين مباشرة بتسجيل الدعوى أو برفض تسجيلها.

القسم الثانى

تشكيل هيئة التحكيم

مادة (37)

1 – تشكل هيئة التحكيم المشار إليها فيما بعد باسم (المحكمة) فورا بعد تسجيل الدعوى طبقا للمادة (36).

2 – (أ) تتكون – المحكمة – من محكم واحد أو عدد فردى من المحكمين الذين يعينون باتفاق الطرفين.

ب – فى حالة عدم اتفاق الطرفين على عدد المحكمين وطريقة تعيينهم تشكل المحكمة من ثلاثة محكمين، يقوم كل طرف بتعيين محكم واحد أما المحكم الثالث وهو رئيس المحكمة فيتم تعيينه بموافقة الطرفين.

مادة (38)

إذا لم يتم تكوين المحكمة خلال (90) يوما من تاريخ الإخطار بتسجيل الدعوى المرسل من السكرتير العام طبقا للفقرة الثالثة من المادة (36) أو فى أى مهلة أخرى يوافق عليها الطرفان يقوم الرئيس تلبية لرغبة أى من الطرفين وبعد التشاور معهما بقدر الإمكان بتعيين المحكم أو المحكمين الذين لم يعينوا بعد ولا يجوز للمحكمين المعينين من قبل الرئيس طبقا لنصوص هذه المادة أن يكونوا من بين رعايا الدول المتعاقدة التى تشكل طرفا فى النزاع أو أن يكونوا من الدول المتعاقدة التى يكون أحد رعاياها طرفا فى النزاع.

مادة (39)

تكون أغلبية المحكمين من بين رعايا الدول الأخرى بخلاف

الدول المتعاقدة التى تشكل طرفا فى النزاع أو من بين رعايا الدول المتعاقدة الذين يشمل النزاع من بين رعاياها بشرط ألا تسرى أحكام هذه المادة إذا اتفقت الأطراف المتنازعة على الحكم المنفرد أو اتفقت على كل عضو من أعضاء هيئة التحكيم.

مادة (40)

1 – لا يجوز تعيين المحكمين من خارج القائمة إلا فى الحالة التى يقوم فيها الرئيس بالتعيين وفقا لنص المادة (38).

2 – ينبغى أن يتصف المحكم والمحكمون المعينين من خارج القائمة بالصفات التى تنص عليها الفقرة الأولى من المادة (14).

القسم الثالث

سلطات ووظائف المحكمة

مادة (41)

1 – المحكمة هى التى تحدد اختصاصاتها.

2 – أى اعتراض من جانب أحد طرفى النزاع على أساس أن النزاع ليس من اختصاص المركز، أو لأى أسباب أخرى، لا يقع فى اختصاص المحكمة وتقرر المحكمة إن كانت ستعالجه كمسألة مبدئية منفصلة أو تقرر ضمه إلى موضوع النزاع.

مدة (42)

1 – تفصل المحكمة فى النزاع طبقا للنظم القانونية التى وافقت عليها الأطراف المتنازعة فإذا لم يتفق الطرفان تقوم المحكمة بتطبيق قانون الدولة المتعاقدة طرف النزاع (بما فى ذلك القواعد الخاصة بتنازع القوانين) وكذلك مبادئ القانون الدولى الواجب تطبيقها فى هذا

الصدد.

1 – ليس للمحكمة أن تحكم بعدم اختصاصها على أساس سكوت أو غموض القانون.

3 – لا تمس نصوص الفقرات السابقة (1،2) قدرة المحكمة على الفصل بالعدل والإنصاف وهذا فى حالة موافقة الطرفين.

مادة (43)

بخلاف ما قد يتفق عليه الطرفان يجوز للمحكمة إذا تراءى لها لدى أى مرحلة من مراحل النزاع أن تجرى الآتى:

أ – دعوة طرفى النزاع لتقديم المستندات وغيرها من الأدلة.

ب – معاينة الأماكن المرتبطة بالنزاع والقيام بالتحريات التى ترى المحكمة أنها ضرورية.

مادة (44)

يتم السير فى إجراءات التحكيم طبقا لأحكام هذا القسم وتبعا لقواعد التحكيم السارية فى يوم الاتفاق على التحكيم ما لم تتفق الأطراف المعنية على خلاف ذلك. وإذا عرضت مسألة تتعلق بإجراءات غير مدرجة فى هذا القسم أو فى نظام التحكيم أو أى قواعد أخرى يتفق عليها الطرفان فإن المحكمة هى التى تفصل فى أمرها.

مادة (45)

1 – إذا فشل طرف فى الحضور أمام المحكمة أو لم يستطع عرض دعواه لا يترتب ذلك حقا للطرف الآخر.

2 – إذا لم يحضر أحد الطرفين أمام المحكمة أو فشل فى تقديم دعواه خلال أى مرحلة من مراحل الإجراءات فإن من حق الطرف

الآخر أن يطلب من المحكمة اتخاذ قرار بشأن النزاع ويجيب على المحكمة قبل اتخاذ أى قرار اخطار الطرف المتخلف مع منحه مهلة قضائية إلا إذا اقتنعت المحكمة أنه ليس فى نية الطرف المتخلف المثول أمامها وعرض دعواه.

مادة (46)

بخلاف ما قد يتفق عليه الطرفان فإن المحكمة بناء على طلب أحد الطرفين يجب أن تفصل فى كل نزاع عرضى أو إضافى أو مضاد يتعلق مباشرة بموضوع النزاع بشرط أن تكون هذه المواضيع فى نطاق الاتفاق الذى تم بين الطرفين وأن تكون من باب أولى فى نطاق الاختصاص القانونى للمركز.

مادة (47)

بخلاف ما قد يتفق عليه الطرفان يجوز للمحكمة أن توصى باتخاذ الإجراءات التحفظية المتعلقة بحماية الطرفين إذا رأت أن الظروف تحتم ذلك.

القسم الرابع

الأحكام

مادة (48)

1 – تقرر الأحكام بأغلبية أصوات جميع أعضائها.

2 – ويصدر الحكم كتابة وموقع عليه من أعضاء المحكمة الذين أعطوا رأيهم فى صالح هذا الحكم.

3 – يجب أن يتناول الحكم كل مسألة عرضت على المحكمة وأن يقرر المبررات التى على أساسها صدر الحكم.

4 – يمكن لكل عضو من أعضاء المحكمة أن يرفق رأيه الخاص بقرار المحكمة سواء كان هذا الرأى يتفق أولا مع رأى الأغلبية كما يمكن له أن يرفق مذكرة برأيه المعارض.

5 – لا يقوم المركزى بنشر أى حكم دون موافقة الطرفين.

مادة (49)

1 – يرسل السكرتير العام مباشرة نسخا معتمدة طبق الأصل من الحكم إلى كل من الطرفين، ويعتبر أن الحكم قد أعلن اعتبارا من يوم إرسال النسخ المعتمدة.

2 – وبناء على تقدم أحد الطرفين بطلب خلاف (45) يوما من تاريخ صدور الحكم يجوز للمحكمة بعد إخطار الطرف الآخر أن تبت فى أى أمر لم يتناوله الحكم أو تصحح أى خطأ كتابى أو حسابى أو أى خطأ مشابه يتضمنه الحكم. وقرار المحكمة يعتبر جزءا لا يتجزأ من الحكم ويتم اخطار الطرفين به بنفس الوسائل التى يتم إخطار الحكم بها. وتسرى المهلات التى تنص عليها الفقرة (2) من المادة (51) والفقرة (2) من المادة (52) اعتبارا من تاريخ إصدار القرار.

القسم الخامس

تفسير وإعادة وإلغاء الحكم

مادة (50)

1- إذا نشأ بين الطرفين نزاع بسبب معنى فى مدى تطبيق الحكم فإن لأى من الرفين تقديم طلب كتابى إلى السكرتير العام لتفسير الحكم.

2 – ويعرض الطلب إذا أمكن أمام المحكمة التى أصدرت

حكمها من قبل، وفى حالة الاستحالة يجب تشكيل محكمة جديدة طبقا للقسم الثانى من هذا الباب ويمكن للمحكمة طبقا لما تحتمه الظروف، أن تؤجل تنفيذ الحكم لحين صدور قرارها.

مادة (51)

1 – ويمكن لأى من الطرفين تقديم طلب كتابى إلى السكرتير العام لإعادة النظر فى الحكم على أساس اكتشاف حقيقة تؤثر على الحكم بشرط أن تكون هذه الحقيقة غائبة عن علم المحكمة عند إصدارها للحكم أو أن جهل الطالب بهذه الحقيقة لم يكن نتيجة لإهماله.

2 – يجب أن يقدم الطلب فى خلال 90 يوما من اكتشاف هذه الحقيقة وعلى أى حال خلال الثلاث سنوات التى تلى صدور الحكم.

3 – ويقدم الطلب إن أمكن ذلك إلى المحكمة التى أصدرت الحكم وفى حالة الاستحالة تشكل محكمة جديدة طبقا للقسم الثانى من هذا الباب.

4 – وتستطيع المحكمة أن تؤجل تنفيذ الحكم إن رأت أن ذلك ضروريا لحين صدور قرارها وإذا تضمن الطلب تأجيل تنفيذ الحكم فإن التأجيل يكون مؤقتا لحين صدور قرار المحكمة.

مادة (52)

1 – يجوز لأى طرف من الطرفين أن يقدم طلبا كتابيا إلى السكرتير العام لإلغاء الحكم لأى سبب من الأسباب الآتية:

أ – خطأ فى تشكيل المحكمة.

ب – استعمال المحكمة سلطة زائدة عن اختصاصاتها.

ج – عدم صلاحية عضو من أعضاء المحكمة.

د – إهمال خطير لإجراء أساسى من إجراءات المحكمة.

هـ - فشل المحكمة فى ذكر الأسباب التى بنى عليها.

2 – ويجب أن يقدم الطلب فى خلال (120) يوما من تاريخ النطق بالحكم إلا إذا كان طلب إلغاء الحكم قائما على عدم الصلاحية، ففى هذه الحالة يجب تقديم الطلب فى خلال (120) يوما من اكتشاف عدم الصلاحية أو خلال الثلاث سنوات التى تلى صدور الحكم.

3 – ويعين الرئيس حال استلامه الطلب لجنة خاصة من ثلاثة أشخاص من بين المدونين فى قائمة المحكمين، ولا يكون عضوا من أعضاء اللجنة المذكورة من بين أعضاء المحكمة التى أصدرت حكمها من قبل، أو أن يحمل نفس جنسية أحد أعضاء المحكمة المذكورة أو جنسية الدولة طرف النزاع أو الدولة التى يكون أحد رعاياها طرفا فى النزاع أو أدرج فى قائمة المحكمين عن طريق الدول المذكورة إذا قام بوظيفة التوفيق فى نفس النزاع وللجنة الحق فى الإلغاء الكلى أو الجزئى للحكم استنادا إلى أحد الأسباب المدونة فى الفقرة الأولى من هذه المادة.

4 – وتطبق نصوص المادة (41 – 45 – 48 – 49 0 53 – 54) ونصوص الباب السادس والسابع بعد إدخال أى تعديلات ضرورية على إجراءات اللجنة.

5 – وتستطيع اللجنة إن رأت أن الظروف تحتم ذلك أن تقرر وقف تنفيذ الحكم أو تأجيله مؤقتا لحين صدور قرار اللجنة.

6 – إذا ألغى الحكم يعرض النزاع بناء على طلب أى من الطرفين أمام محكمة جديدة تشكل طبقا للقسم الثانى من هذا الباب.

القسم السادس

الاعتراف بالحكم وتنفيذه

مادة (53)

1 – يكون الحكم ملزما للطرفين ولا يمكن استئنافه بأى طريقة إلا فى الحالات الواردة فى هذه الاتفاقية وكل طرف ملزم بتنفيذ الحكم طبقا لشروطه إلا فى حالة تأجيل التنفيذ طبقا لأحكام هذه الاتفاقية.

2 – لأغراض هذا الباب يشمل "الحكم" تفسير أى قرار أو مراجعة أو إلغاء طبقا للمادة (50، 51، 52).

مادة (54)

1 – تعترف كل دولة متعاقدة بالحكم الذى صدر بناء على أحكام هذه الاتفاقية وتضمن تنفيذ الالتزامات المالية التى يفرضها الحكم كما لو كان حكما نهائيا صادرا من محكمة محلية، وعلى الدولة المتعاقدة التى تتبع النظام الفيدرالى ضمان تنفيذ الحكم عن طريق محاكمها الفيدرالية وأن تلزم هذه المحاكم بمعاملة هذا الحكم كحكم نهائى صادر من محاكم إحدى الدول الفيدرالية.

2 – على الطرف الذى يرغب فى الحصول على الاعتراف بالحكم وتنفيذه على أرض الدولة المتعاقدة أن يقدم صورة طبق الأصل معتمدة من السكرتير العام إلى المحكمة الوطنية المختصة أو إلى سلطة أخرى تحددها الدولة المذكورة لهذا الغرض وعلى كل دولة متعاقدة أن تخطر السكرتير العام بالمحكمة المختصة أو الجهات التى تحددها لهذا الغرض وبكل التغييرات التى تطرأ فى هذا الشأن.

3 – ويحكم تنفيذ الحكم القوانين السائدة الخاصة بتنفيذ الأحكام القضائية فى الدولة التى ينفذ فيها الحكم.

مادة (55)

لا تفسر أحكام المادة (54) على أنها مساس بالقانون المعمول به فى أية دولة لتعلقه بحصانة الدولة أو أية دولة أجنبية.

الباب الخامس

استبدال ورد الموفقين والمحكمين

مادة (56)

1 – بعد تشكيل اللجنة أو المحكمة وبدء الإجراءات لا يمكن القيام بأى تعديل فى تشكيلها إلا فى حالة وفاة أو عجز أو استقالة أحد الموفقين أو المحكمين ويتم ملء محله الشاغر طبقا لنصوص القسم الثانى من الباب الثالث أو القسم الثانى من الباب الرابع.

2 – يستمر كل عضو من أعضاء اللجنة أو المحكمة فى القيام بمهام وظائفه ولا يعوقه عن ذلك عدم ظهور أسمه فى الجدول.

3 – إذا استقال أحد الموفقين أو المحكمين المعينين من جانب أحد الطرفين دون موافقة اللجنة أو المحكمة التى هو عضو فيها، كان على الرئيس أن يعين بدلا منه شخصا من الجدول الخاص لملء المكان الشاغر.

مادة (57)

يستطيع أى من الطرفين الاقتراح على اللجنة أو المحكمة تنحية أحد أعضائها بسبب عدم تمتعه بالصفات المنصوص عليها فى الفقرة (أ) من المادة (14)، ولأى طرف فى التحكيم ، علاوة على ذلك، أن يطلب خلال نظر النزاع رد محكم استنادا على أنه غير صالح للتعيين فى المحكمة طبقا لنصوص القسم الثانى من الباب الرابع.

مادة (58)

يقوم باقى أعضاء اللجنة أو المحكمة حسب الاقتراح المعروض بإصدار القرار الخاص باقتراح الرد بشرط عدم تساوى الأصوات أو فى حالة اقتراح رد مرفق أو محكم وحيد أو اقتراح أغلبية الموفقين أو المحكمين يكون للرئيس حق إصدار القرار. إذا تقرر أن الاقتراح بالرد مبنى على أساس سليم يستبدل الموفق أو المحكم المقصود بالقرار طبقا لنصوص القسم الثانى من الباب الثالث أو القسم الثانى من الباب الرابع.

الباب السادس

مصاريف الإجراءات

مادة (59)

يحدد السكرتير العام طبقا للوائح التى يقررها المجلس الإدارى الرسوم المستحقة على الطرفين لاستخدامهما التسهيلات التى تتيحها.

مادة (60)

1 – وتحدد كل لجنة وكل محكمة أتعاب ومصاريف أعضائها فى الحدود التى يقررها المجلس الإدارى من وقت خر بعد استشارة السكرتير العام.

2 – ليس فى شرط الفقرة (1) ما يمنع من اتفاق الطرفين مقدما مع اللجنة أو المحكمة على أتعاب ومصاريف الأعضاء.

مادة (61)

1 – فى حالة إجراءات التوفيق يتحمل الطرفان بالتساوى أتعاب ومصاريف أعضاء اللجنة وكذا الرسوم المستحقة لاستخدام

التسهيلات التى يتيحها المركز ويتحمل كل طرف أى نفقات أخرى أثناء الإجراءات.

2 – وفى حالة الإجراءات الخاصة بالتحكيم تقوم المحكمة (باستثناء ما قد يتفق عليه الطرفان) بتحديد المصروفات كما تقرر المحكمة كيف ومن يقوم بسداد هذه المصروفات وكذا أتعاب ومصروفات أعضاء المحكمة كما تحدد الرسوم المستحقة لاستخدام التسهيلات التى يتيحها المركز، ويعتبر هذا القرار جزءا لا يتجزأ من الحكم.

الباب السابع

مكان الإجراءات

مادة (62)

وتجرى إجراءات التوفيق والتحكيم فى مقر المركز إلا فى الحالات التى ينص عليها فيما بعد.

مادة (63)

ويجوز بموافقة الطرفين أن تتم إجراءات التوفيق التحكيم فى:

أ – مقر الهيئة الدائمة للتحكيم أو أى هيئة أخرى مناسبة عامة أو خاصة يكون المركز قد اتفق معها على الترتيبات اللازمة لهذا الغرض.

ب – أى مكان آخر توافق عليه الهيئة أو المحكمة بعد استشارة السكرتير العام.

الباب الثامن

النزاع بين الدول المتعاقدة

مادة (64)

كل نزاع ينشأ بين الدول المتعاقدة حول تفسير أو تطبيق هذه الاتفاقية ولا يمكن حله بالتفاوض يحال إلى محكمة العدل الدولية بناء على طلب أى طرف فى النزاع ما لم تتفق الدول المعنية على طريقة أخرى للتسوية.

الباب التاسع

التعديلات

مادة (65)

لكل دولة متعاقدة الحق فى اقتراح إدخال تعديلات على هذه الاتفاقية ويجب إرسال نص التعديل إلى السكرتير العام قبل (90) يوما على الأقل من اجتماع مجلس الإدارة حتى يتسنى للسكرتير العام إبلاغه لأعضاء مجلس الإدارة قبل اجتماعه لبحث التعديل المقترح.

مادة (66)

1 – إذا أقر مجلس الإدارة هذا التعديل بأغلبية ثلثى الأعضاء فإن التعديل يوزع على جميع الدول المتعاقدة للتصديق عليه أو قبوله أو الموافقة عليه.

2 – ولا يمس التعديل الحقوق والالتزامات التى رتبتها الاتفاقية للدولة المتعاقدة أو لأحد الأقاليم التابعة لها أو لوكالة من وكالاتها أو لأحد رعاياها طالما أن موافقة الجهاز القانونى للمركز قد صدرت قبل يوم صلاحية التعديل للنفاذ.

الباب العاشر
أحكام نهائية

مادة (67)

سوف تكون هذه الاتفاقية صالحة لتوقيع الدول الأعضاء فى البنك وكذلك لكل دولة أخرى عضو فى محكمة العدل الدولية بشرط موافقة ثلثى أعضاء مجلس الإدارة على دعوتها لتوقيع المعاهدة.

مادة (68)

1 – يتم التصديق أو إقرار أو قبول هذه الاتفاقية من الدول الموقعة طبقا لإجراءاتها الدستورية.

2 – يكون لهذه الاتفاقية قوة النفاذ بعد (30) يوما من توقيع (20) دولة على إقرارها أو قبولها أو التصديق عليها وبعد (30) يوما من تاريخ إيداع وثيقة التصديق أو القبول أو الإقرار بالنسبة للدول المنضمة فيما بعد.

مادة (69)

تتخذ كل دولة متعاقدة الإجراءات التشريعية أو أية إجراءات أخرى ضرورية بغرض تطبيق نصوص الاتفاقية على أراضيها.

مادة (70)

تطبق هذه الاتفاقية على كل الأراضى التابعة للدولة المتعاقدة والتى تدخل ضمن مسئوليتها الدولية بخلاف الأراضى التى تستثنيها الدولة المذكورة عن طريق مذكرة موجهة إلى المركز الرئيسى سواء عند تقديم الإقرار أو القبول أو التصديق أو فيما بعد.

مادة (71)

يجوز لأى دولة متعاقدة أن تنسحب من هذه الاتفاقية عن طريق إرسال إخطار بذلك إلى المركز الرئيسى ويصبح انسحابها سارى المفعول بعد ستة أشهر من استلام الإخطار المذكور.

مادة (72)

لا يؤثر الإخطار الذى تقدمه الدولة المتعاقدة بموجب نصوص المادة (70) والمادة (71) على الحقوق والالتزامات التى ترتبت لهذه الدولة أو لأحد الأقاليم التابعة لها أو لأحد وكالاتها أو لأحد رعاياها نتيجة للموافقة السابقة المبلغة إلى المركز قبل إرسال الإخطار.

مادة (73)

تودع وثائق التصدق أو الإقرار أو الموافقة أو أى تعديل يرتبطة بهذه الاتفاقية لدى البنك الدولى الذى يقوم بوظيفة مركز إيداع لوثائق هذه الاتفاقية ويرسل مركز الإيداع نسخا معتمدة من هذه الاتفاقية إلى الدول الأعضاء فى البنك ولأى دولة تدعى للتوقيع على الاتفاقية.

مادة (74)

يقوم مركز الإيداع بتسجيل الاتفاقية لدى سكرتارية الأمم المتحدة طبقا للمادة (102) من ميثاق الأمم المتحدة وطبقا للإجراءات التى وضعتها الجمعية العمومية.

مادة (75)

يخطر مركز الإيداع جميع الدول الموقعة بالآتى:

أ – بالتوقيعات التى تمت طبقا للمادة (67).

ب – بيان عن وثائق التصديق أو القبول أو الموافقة طبقا للمادة (73).

جـ - بتاريخ بدء نفاذ هذه الاتفاقية طبقا للمادة (68).

د – بيـان بالأراضــى التــى تطبـق عليهـا الاتفاقيـة طبقـا للمـادة (70).

هـ - بتاريخ بدء سريان أى تعديل فى هذه الاتفاقية طبقا للمادة (66).

و – بالانسحاب طبقا للمادة (71).



Annex (6)
ACSID Administrative And Financial Regulations

القواعد الإدارية والمالية للمركز الدولى لتسوية المنازعات

Chapter 1
Procedures of the Administrative Council Regulation 1
Date and Place of the Annual Meeting

(1) The Annual Meeting of the Administrative Council shall take place in conjunction with the Annual Meeting of the Board of Governors of the International Bank for Reconstruction and Development (hereinafter referred to as the "Bank"), unless the Council specifies otherwise.

(2) The Secretary-General shall coordinate the arrangements for the Annual Meeting of the Administrative Council with the appropriate officers of the Bank.

Regulation 2
Notice of Meetings

(1) The Secretary-General shall, by any rapid means of communication, give each member notice of

the time and place of each meeting of the Administrative Council, which notice shall be dispatched not less than 42 days prior to the date set for such meeting, except that in urgent cases such notice shall be sufficient if dispatched by telegram or cable not less than 10 days prior to the date set for such meeting.

(2) Any meeting of the Administrative Council at which no quorum is present may be adjourned from time to time by a majority of the members present and notice of the adjourned meeting need not be given.

Regulation 3
Agenda for Meetings

(1) Under the direction of the Chairman, the Secretary-General shall prepare a brief agenda for each meeting of the Administrative Council and shall transmit such agenda to each member with the notice of such meeting.

(2) Additional subjects may be placed on the agenda for any meeting of the Administrative Council by any member provided that he shall given notice thereof to the Secretary-General not less than seven days prior to the date set for such meeting. In special circumstances the Chairman, or the Secretary-General after consulting the Chairman, may at any time place

additional subjects on the agenda for any meeting of the Council. The Secretary-General shall as promptly as possible given each member notice of the addition of any subject to the agenda for any meeting.

(3) The Administrative Council may at any time authorize any subject to be placed on the agenda for any meting even though the notice required by this Regulation shall not have been given.

Regulation 4
Presiding Officer

(1) The Chairman shall be the Presiding Officer at meetings of the Administrative Council.

(2) If the Chairman is unable to preside over all or part of a meeting of the Council, one of the members of the Administrative Council shall act as temporary Presiding Officer. This member shall to the Representative, Alternate Representative or temporary Alternate Representative of that Contracting State represented at the meeting that stands highest on a list of Contracting States arranged chronologically according to the date of the deposit of instruments of ratification, acceptance or approval of the Convention, starting with the State following the one that had on the last previous occasion provided a temporary

Presiding Officer. A temporary Presiding Officer may cast the vote of the State he represents, or he may assign another member of his delegation to do so.

Regulation 5
Secretary of the Council

(1) The Secretary-General shall serve as Secretary of the Administrative Council.

(2) Except as otherwise specifically directed by the Administrative Council, the Secretary-General, in consultation with the Chairman, shall have charge of all arrangements for the holding of meeting of the Council.

(3) The Secretary-General shall keep a summary record of the proceedings of the Administrative Council, copies of which shall be provided to all members.

(4) The Secretary-General shall present to each Annual Meeting of the Administrative Council, for its approval pursuant to Article 6(1) (g) of the Convention, the annual report on the operation of the Centre.

Regulation 6

Attendance at Meetings

(1) The Secretary-General and the Deputy Secretaries-General may attend all meetings of the Administrative Council.

(2) The Secretary-General, in consultation with the Chairman, may invite observers to attend may meeting of the Administrative Council.

Regulation 7
Voting

(1) Except as otherwise specifically provided in the Convention, all decisions of the Administrative Council shall be taken by a majority of the votes cast. At any meeting the Presiding Officer may ascertain the sense of the meeting in lieu of a formal vote but he shall require a formal vote upon the request of any member. Whenever a formal vote is required the written text of the motion shall be distributed to the members.

(2) No member of the Administrative Council may vote by proxy or by any other method than in person, but the representative of a Contracting State may designate a temporary alternate to vote for him at

any meeting at which the regular alternate is not present.

(3) Whenever, in the judgment of the Chairman, any action must be taken by the Administrative Council which should not be postponed until the next Annual Meeting of the Council and does not warrant the calling of a special meeting, the Secretary-General shall transmit to each member by any rapid means of communication a motion embodying the proposed action with a request for a vote by the members of the Council. Votes shall be cast during a period ending 21 days after such dispatch, unless a longer period is approved by the Chairman. At the expiration of the established period, the Secretary-General shall record the results and notify all members of the Council. If the replies received do not include those of a majority of the members, the motion shall be considered lost.

(4) Whenever at a meeting of the Administrative Council at which all Contracting States are not represented, the votes necessary to adopt a proposed decision by a majority of two-thirds of the members of the Council are not obtained, the Council with the concurrence of the Chairman may decide that the votes of those members of the Council represented at

the meeting shall be registered and the votes of the absent members shall be solicited in accordance with paragraph (3) of the Regulation. Votes registered at the meeting may be changed by the member before the expiration of the voting period established pursuant to that paragraph.

Chapter II
The Secretariat

Regulation 8
Election of the Secretary-General And His Deputies

In proposing to the Administrative Council one or more candidates for the office of Secretary-General or any Deputy Secretary-General, the Chairman shall at the same time make proposals with respect to:

(a) the length of the term of service;

(b) Approval for any of the candidates to hold, if elected, any other employment or to engage in any other occupation;

(c) the conditions of service, taking into account any proposals made pursuant to paragraph (b).

Regulation 9
Acting Secretary-General

(1) If, on the election of a Deputy Secretary-General, there should at any time be more than one Deputy Secretary-General, the Chairman shall immediately after such election propose to the Administrative Council the order in which these Deputies shall act as Secretary-General pursuant to Article 10(3) of the Convention. In the absence of such a decision the order shall be that of seniority in the post of Deputy.

(2) The Secretary-General shall designate the member of the staff of the Centre who shall act for him during his absence or inability to act, if all deputy Secretaries-General should also be absent or unable to act or if the office of Deputy should be vacant. If there should be a simultaneous vacancy in the offices of Secretary-General and Deputy Secretary-General, the Chairman shall designate the member of the staff who shall act for the Secretary-General.

Regulation 10
Appointment of Staff Members

The Secretary-General shall appoint the members of the staff of the Centre. Appointments may

be made directly or by secondment.

Regulation 11
Conditions of Employment

(1) The conditions of service of the members of the staff of the Centre shall be the same as those of the staff of the Bank.

(2) The Secretary-General shall make arrangements with the Bank, within the framework of the general administrative arrangements approved by the Administrative Council pursuant to Article 6(1) (d) of the Convention, for the participation of members of the Secretariat in the Staff Retirement Plan of the Bank as well as in other facilities and contractual arrangements established for the benefit of the staff of the Bank.

Regulation 12
Authority of the Secretary-General

(1) Deputy Secretaries-General and the members of the staff, whether on direct appointment or on secondment, shall act solely under the direction of the Secretary-General.

(2) The Secretary-General shall have authority to dismiss members of the Secretariat and to impose

disciplinary measures. In the case of Deputy Secretaries-General dismissal may only be imposed with the concurrence of the Administrative Council.

Regulation 13
Incompatibility of Functions

The Secretary-General, the Deputy Secretaries-General and the members of the staff may not serve on the Panel of Conciliators or of Arbitrators, or as members of any Commission or Tribunal.

Chapter III
Financial Provisions

Regulation 14

Direct Cost of Individual Proceedings

(1) Unless otherwise agreed pursuant to Article 60(2) of the Convention, and in addition to receiving reimbursement for any direct expenses reasonably incurred, each member of a Commission, a Tribunal or and ad hoc Committee appointed from the Panel of Arbitrators pursuant to Article 52(3) of the Convention (hereinafter referred to as "Committee") shall receiver:

(a) a fee for each day on which he participated in meetings of the body of which he is a member;

(b) a fee for the equivalent of each eight-hour day of other work performed in connection with the proceedings;

(c) in lieu of reimbursement of subsistence expenses when away from his normal place of residence, a per diem allowance based on the allowance established from time to time for the Executive Directors of the Bank;

(d) travel expenses in connection with meetings of the body of which he is a member based on the norms established from time to time for the Executive Directors of the Bank.

The amounts of the fees referred to in paragraphs (a) and (b) above shall be determined from time to time by the Secretary-General, with the approval of the Chairman, and may be changed, not more than once a year, in order to take account of monetary changes and changes in the cost of living.

(2) All payments, including reimbursement of expenses, to the following shall in all cases be made by the Centre and not be or through either party to the proceeding:

(a) members of Commissions, Tribunals and

Committees;

(b) witnesses and experts summoned at the initiative of a Commission, tribunal or Committee, and not of one of the parties;

(c) members of the secretariat of the Centre, including persons (such as interpreters, translators, reporters or secretaries) especially engaged by the Centre for a particular proceeding;

(d) the host of any proceeding held away from the seat of the Centre pursuant to Article 63 of the Convention.

(3) In order to enable the Centre to make the payments provided for in paragraph (2), as well as to incur other direct expenses in connection with a proceeding (other than expenses covered by Regulation 15):

(a) the parties shall make advance payments to the Centre as follows:

(i) initially as soon as a Commission or Tribunal has been constituted, the Secretary-General shall, after consultation with the President of the body in question and, as far as possible, the parties, estimate the expenses that will be incurred by the Centre during the

next three to six months and request the parties to make an advance payment of this amount;

(ii) if at any time the Secretary-General determines, after consultation with the President of the body in question and as far as possible the parties, that the advances made by the parties will not cover a revised estimate of expenses for the period or any subsequent period, he shall request the parties to make supplementary advance payments.

(b) the Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or expenses of the members of any Commission, Tribunal or Committee, unless sufficient advance payments shall previously have been made;

(c) if the initial advance payments are insufficient to cover estimated future expenses, prior to requesting the parties to make additional advance payments, the Secretary-General shall ascertain the actual expenses incurred and commitments entered into by the Centre with regard to each proceeding and shall appropriately charge or credit the parties;

(d) in connection with every conciliation proceeding, and in connection with every arbitration

proceeding unless a different division is provided for tin the Arbitration Rules or is decided by the parties or the Tribunal, each party shall pay one half of each advance or supplemental charge, without prejudice to the final decision on the payment of the cost of an arbitration proceeding to be made by the Tribunal pursuant to Article 61 (2) of the Convention. All advances and charges shall be payable, at the place and in the currencies specified by the Secretary-General, as soon as a request for payment is made by him. If the amounts requested are not paid in full within 30 days, then the Secretary-General shall inform both parties of the default and given an opportunity to either of them to make the required payment. At any time 15 days after such information is sent by the Secretary-General, he may move that the Commission or Tribunal stay the proceeding, if by the date of such motion any part of the require payment is still outstanding. If any proceeding is stayed for non-payment for a consecutive period in excess of six months, the Secretary-General may, after notice to and as far as possible in consultation with the parties, mover that the competent body discontinue the proceeding;

(e) in the event that an application for

annulment of an award is registered, the above provisions of this Rule shall apply mutatis mutandis, except that the applicant shall be solely responsible for making the advance payments requested by the Secretary-General to cover expenses following the constitution of the Committee, and without prejudice to the right of the Committee in accordance with Article 52 (4) of the Convention to decide how and by whom expenses incurred in connection with the annulment proceeding shall be paid.

Regulation 15
Special Services to Parties

(1) The Centre shall only perform any special service for a party in connection with a proceedings (for example, the provision of translations or copies) if the party shall in advance have deposited an amount sufficient to cover the charge for such service.

(2) Charges for special services shall normally be based on a schedule of fees to be promulgated from time to time by the Secretary-General and communicated by him to all Contracting States as well as to the parties to all pending proceedings.

Regulation 16
Fee for Lodging Requests

The party or parties (if a request is made jointly) wishing to institute a conciliation or arbitration proceeding, requesting a supplementary decision to, or the rectification, interpretation, revision or annulment of an arbitral award, or requesting resubmission of a dispute to a new Tribunal after the annulment of an arbitral award, shall pay to the Centre a non-refundable fee determined from time to time by the Secretary-General.

Regulation 17
The Budget

(1) The fiscal year of the Centre shall run from July 1 of each year to June 30 of the following year.

(2) Before the end of each fiscal year the Secretary-General shall prepare and submit, for adoption by the Administrative Council at its next Annual Meeting and in accordance with Article 6(1)(f) of the Convention, a budget for the following fiscal year. This budget is to indicate the expected expenditures of the Centre (excepting those to be incurred on a reimbursable basis) and the expected revenues (excepting reimbursements).

(3) If, during the course of a fiscal year, the Secretary-General determines that the expected expenditures will exceed those authorized in the budget, or if he should wish to incur expenditures not previously authorized, he shall, in consultation with the Chairman, prepare a supplementary budget, which he shall submit to the Administrative Council for adoption, either at the Annual Meeting or at any other meeting, or in accordance with Regulation 7(3).

(4) The adoption of a budget constitutes authority for the Secretary-General to make expenditures and incur obligations for the purposes and within the limits specified in the budget. Unless otherwise provided by the Administrative Council, the Secretary-General may exceed the amount specified for any given budget item, provided that the total amount of the budget is not exceeded.

(5) Pending the adoption of the budget by the Administrative Council, the Secretary-General may incur expenditures for the purposes and within the limits specified in the budget he submitted to the Council, up to one quarter of the amount authorized to be expended in the previous fiscal year but in no event exceeding the amount that the Bank has agre4ed to

make available for the current fiscal year.

Regulation 18
Assessment of Contributions

(1) Any excess of expected expenditures over expected revenues shall be assessed on the Contracting States. Each State that is not a member of the Bank shall be assessed a fraction of the total assessment equal to the fraction of the budget of the International Court of Justice that it would have to bear if that budget were divided only among the Contracting States in proportion to the then current scale of contributions applicable to the budget of the Court; the balance of the total assessment shall be divided among the Contracting States that are members of the Bank in proportion to their respective subscription to the capital stock of the Bank. The assessments shall be calculated by the Secretary-General immediately after the adoption of the annual budget, on the basis of the then current membership of the Centre, and shall be promptly communicated to all Contracting States. The assessments shall be payable as soon as they are thus communicated.

(2) On the adoption of a supplementary budget, the secretary-General shall immediately calculate

supplementary assessments, which shall be payable as soon as they are communicated to the Contracting States.

(3) A State which is party to the Convention during any part of a fiscal year shall be assessed for the entire fiscal year. If a State becomes a party to the Convention after the assessments for a given fiscal year have been calculated, its assessment shall be calculated by the application of the same appropriate factor as was applied in calculating the original assessments and no recalculation of the assessments of the other Contracting States shall be made.

(4), If, after the close of a fiscal year, it is determined that there is a cash surplus, such surplus shall, unless the Administrative Council otherwise decides, be credited to the Contracting States in proportion to the assessed contributions they had paid for that fiscal year. These credits shall be made with respect to the assessments for the fiscal year commencing two years after the end of the fiscal year to which the surplus pertains.

Regulation 19
Audits

The Secretary-General shall have an audit of the

accounts of the Centre made once each year and on the basis of this audit submit a financial statement to the Administrative Council for consideration at the Annual Meeting.

Chapter IV
General Functions of the Secretariat

Regulation 20
List of Contracting States

The Secretary-General shall maintain a list, which he shall transmit from time to time to all Contracting States and on request to any State or person, of the Contracting States (including former Contracting States, showing the date on which their notice of denunciation was received by the depositary), indicating for each:

(a) the date on which the Convention entered into force with respect to it;

(b) any territories excluded pursuant to Article 70 of the Convention and the dates on which the notice of exclusion and any modification of such notice were received by the depositary;

(c) any designation, pursuant to Article 25(1) of the Convention, of constituent subdivisions or

agencies to whose investment disputes the jurisdiction of the Centre extends;

(d) any notification, pursuant to Article 25 (3) of the Convention, that no approval by the State is required for the consent by a constituent subdivision or agency to the jurisdiction of the Centre;

(e) any notification, pursuant to Article 25(4) of the Convention, of the class or classes of disputes which the State would or would not consider submitting to the jurisdiction of the Centre;

(f) the competent court or other authority for the recognition and enforcement of arbitral awards, designated pursuant to Article 54(2) of the Convention;

(g) any legislative or other measures taken, pursuant to Article 69 of the Convention, for making its provisions effective in the territories of the State and communicated by the State to the Centre.

Regulation 21
Establishment of Panels

(1) Whenever a contracting State has the right to make one or more designations to the Panel of Conciliators or of Arbitrators, the Secretary-General

shall invite the State to make such designations.

(2) Each designation made by a Contracting State or by the Chairman shall indicate the name, address and nationality of the designee, and include a statement of his qualifications, with particular reference to his competence in the fields of law, commerce, industry and finance.

(3) As soon as the Secretary-General is notified of a designation, he shall inform the designee thereof, indicating to him the designating authority and the terminal date of the period of designation, and requesting confirmation that the designee is willing to serve.

(4) The Secretary-General shall maintain lists, which he shall transmit from time to time to all Contracting States and on request to any State or person, of the members of the Panels of Conciliators and of Arbitrators, indicating for each member:

(a) his address;

(b) his nationality;

(c) the terminal date of the current designation;

(d) the designating authority;

(e) his qualifications.

Regulation 22
Publication

(1) The Secretary-General shall appropriately publish information about the operation of the Centre, including the registration of all requests for conciliation or arbitration and in due course an induction of the date and method of the termination of each proceeding.

(2) If both parties to a proceeding consent to the publication of:

(a) reports of Conciliation Commissions;

(b) arbitral award; or

(c) the minutes and other records of proceedings,

The Secretary-General shall arrange for the publication thereof, in an appropriate form with a view to furthering the development of international law in relation to investments.

Chapter V
Function with Respect
To Individual Proceedings

Regulation 23
The Registers

(1) The Secretary-General shall maintain, in according with rules to be promulgated by him, separate Registers for requests for conciliation and requests for arbitration. In these he shall enter all significant data concerning the institution, conduct and disposition of each proceeding, including in particular the method of constitution and the membership of each Commission, Tribunal and Committee. On the Arbitration Register he shall also enter, with respect to each award, all significant data concerning any request for the supplementation, rectification, interpretation, revision or annulment of the award, and any stay of enforcement.

(2) The Registers shall be open for inspection by any person. The Secretary-General shall promulgate rules concerning access to the Registers, and a schedule of charges for the provision of certified and uncertified extracts there form.

Regulation 24
Means of Communication

(1) During the pendency of any proceeding the Secretary-General shall be the official channel of written communications among the parties, the Commission, Tribunal or Committee, and the Chairman of the Administrative Council, except that:

(a) the parties may communicate directly with each other unless the communication is one required by the Convention or the Institution, Conciliation or Arbitration Rules (hereinafter referred to as the "Rules").

(b) the members of any Commission, Tribunal or Committee shall communicate directly with each other.

(2) Instruments and documents shall be introduced into the proceeding by transmitting them to the Secretary-General, who shall retain the original for the files of the Centre and arrange for appropriate distribution of copies. If the instrument or document does not meet the applicable requirements, the Secretary-General:

(a) shall inform the party submitting it of the

deficiency, and of any consequent action the Secretary-General is taking;

(b) may, if the deficiency is merely a formal one, accept it subject to subsequent correction;

(c) may, if the deficiency consists merely of an insufficiency in the number of copies or the lack of required translations, provide the necessary copies or translations at the cost of the party concerned.

Regulation 25

Secretary

The Secretary-General shall appoint a Secretary for each Commission, Tribunal and Committee. The Secretary may be drawn from among the Secretariat of the Centre, and shall in any case, while serving in that capacity, be considered as a member of its staff. He shall:

(a) represent the Secretary-General and may perform all functions assigned to the latter by these Regulations or the Rules with regard to individual proceedings or assigned to the latter by the Convention, and delegated by him to the Secretary;

(b) be the channel through which the parties may request particular services from the Centre;

(c) keep summary minutes of hearings, unless the parties agree with the Commission, Tribunal or Committee on another manner of keeping the record of the hearings; and

(d) perform other functions with respect to the proceeding at the request of the President of the Commission, Tribunal or Committee, or at the direction of the Secretary-General.

Regulation 26
Place of Proceedings

(1) The Secretary-General shall make arrangements for the holding of conciliation and arbitration proceedings at the seat of the Centre or shall, at the request of the parties and as provided in Article 63 of the Convention, make or supervise arrangements is proceedings are held elsewhere.

(2) The Secretary-General shall assist a Commission or Tribunal, at its request, In visiting any place connected with a dispute or in conducting inquiries there.

Regulation 27
Other Assistance

(1) The Secretary-General shall provide such

other assistance as may be required in connection with all meetings of Commissions, Tribunals and Committees, in particular in making translations and interpretations from one official language of the Centre into another.

(2) The Secretary-General may also provide, by use of the staff and equipment of the Centre or of persons employed and equipment acquired on a short-time basis, other services required for the conduct of proceedings, such as the duplication and translation of documents, or interpretations from and to a language other than an official language of the Centre.

Regulation 28
Depositary Functions

(1) The Secretary-General shall deposit in the archives of the Centre and shall make arrangements for the permanent retention of the original text:

(a) of the request and of all instruments and documents field or prepared in connection with any proceeding, including the minutes of any hearing;

(b) of any report by a Commission or of any award or decision by a Tribunal or Committee.

(2) Subject to the Rules and to the agreement of

the parties to particular proceedings, and upon payment of any charges in accordance with a schedule to be promulgated by the Secretary-General, he shall make available to the partied certified copies of reports and awards (reflecting thereon any supplementary decision, rectification, interpretation, revision or annulment duly made, and any stay of enforcement while it is in effect), as well as of other instruments, documents and minutes.

Chapter VI
Special Provisions Relating to Proceeding

Regulation 29
Time Limits

(1) All time limits, specified in the Convention or the Rules or fixed by a Commission, Tribunal, Committee or the secretary-General, shall be computed from the date on which the limit is announced in the presence of the parties or their representatives or on which the Secretary-General dispatches the pertinent notification or instrument (which date shall be marked on it). The day of such announcement or dispatch hall be excluded from the calculation.

(2) A time limit shall be satisfied if a notification

or instrument dispatched by a party is delivered at the seat of the Centre, or to the Secretary-of the competent Commission, Tribunal or Committee that is meeting away from the seat of the Centre, before the close of business on the indicated date or, if that day is a Saturday, a Sunday, a public holiday observed at the place of delivery or a day on which for any reason regular mail delivery is restricted at the place of delivery, then before the close of business on the next subsequent day on which regular mail service is available.

Regulation 30
Supporting Documentation

(1) Documentation field in support of any request, pleading, application, written observation or other instrument introduced into a proceeding shall consist of one original and of the number of additional copies specified in paragraph (2). The original shall, unless otherwise agreed by the parties or ordered by the competent Commission, Tribunal or Committee, consist of the complete document or of a duly certified copy or extract, except if the party is unable to obtain such document or certified copy or extract (in which case the reason for such inability must be stated).

(2) The number of additional copies of any document shall be equal to the number of additional copies required of the instrument to which the documentation relates, except that no such copies are required if the document has been published and is readily available. Each additional copy shall be certified by the party presenting it to be a true and complete copy shall be certified by the party presenting it to be a true and complete copy of the original, except that if the document is lengthy and relevant only in part, it is sufficient if it is certified to be a true and complete extract of the relevant parts, which must be precisely specified.

(3) Each original and additional copy of a document which is not in a language approved for the proceeding in question, shall, unless otherwise ordered by the competent Commission, Tribunal or Committee, be accompanied by a certified translation into such a language. However, if the document is lengthy and relevant only in part, it is sufficient if only the relevant parts, which must be precisely specified, are translated, provided that the competent body may require a fuller or a complete translation.

(4) Whenever an extract of an original document

is presented pursuant to paragraph (1) or a partial copy or translation pursuant to paragraph (2) or (3), each such extract, copy and translation shall be accompanied by a statement that the omission of the remainder of the text does not render the portion presented misleading.

Chapter VII
Immunities and Privileges

Regulation 31
Certificates of Official Travel

The Secretary-General may issue certificates to members of Commissions, Tribunals or Committees, to officers and employees of the Secretariat and to the parties, agents, counsel, advocates, witnesses and experts appearing in proceedings, indicating that they are traveling in connection with a proceeding under the Convention.

Regulation 32
Waiver of Immunities

(1) The Secretary-General may waive the immunity of:

(a) the Centre;

(b) members of the staff of the Centre.

(2) The Chairman of the Council may waive the immunity of:

(a) the Secretary-General or any Deputy Secretary-General;

(b) members of a Commission, Tribunal or Committee;

(c) the parties, agents, counsel, advocates, witnesses or experts appearing in a proceeding, if a recommendation for such waiver is made by the Commission, Tribunal or Committee concerned.

(3) The Administrative Council may waive the immunity of:

(a) the Chairman and members of the Council;

(b) the parties, agents, counsel, advocates, witnesses or experts appearing in a proceeding, even if no recommendation for such a waiver is made by the Commission, Tribunal or Committee concerned;

(c) the Centre or any person mentioned in paragraph (1) or (2).

Chapter VIII
Miscellaneous

Regulation 33
Communications with Contracting States

Unless another channel of communications is specified by the State concerned, all communications required by the Convention or these Regulations to be sent to Contracting States shall be addressed to the Stat's representative on the Administrative Council.

Regulation 34
Official Languages

(1) The official language of the Centre shall be English, French and Spanish.

(2) The texts of these Regulations in each official language shall be equally authentic.

Annex (7)
ACSID rules of procedure for the institution of conciliation and arbitration proceedings (Institution rules)

قواعد إجراءات التوفيق والتحكيم لدى المركز الدولى لتسوية منازعات الاستثمار

The Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the Institution Rules) of ICSID were adopted by the Administrative Council of the Centre pursuant to Article 6(1) (b) of the ICSID Convention.

The Institution Rules are supplemented by the Administrative and Financial Regulations of the Centre, in particular by Regulations 16, 22(1), 23, 24, 30 and 34(1).

The Institution Rules are restricted in scope to the period of time from the filing of a request to the dispatch of the notice of registration. All transactions subsequent to that time are to be regulated in accordance with the Conciliation and the Arbitration Rules.

Institution Rules

Rule 1
The Request

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation or arbitration proceedings under the Convention shall address a request to that effect in writing to the Secretary-General at the seat of the Centre. The request shall indicate whether it relates to a conciliation or an arbitration proceeding. It shall be drawn up in an official language of the Centre, shall be dated, and shall be signed by the requesting party or its duly authorized representative.

(2) The request may be made jointly by the parties to the dispute.

Rule 2
Contents of the Request

(1) The request shall:

(a) designate precisely each party to the dispute and state the address of each;

(b) state, if one of the parties is a constituent subdivision or agency of a Contracting State, that it hs been designated to the Centre by that State pursuant to Article 25(1) of the Convention;

(c) indicate the date of consent and the instruments in which it is recorded, including, if one party is a constituent subdivision or agency of a Contracting State, similar data on the approval of such consent by that State unless it had notified the Centre that no such approval is required;

(d) indicate with respect to the party that is a national of a Contracting State:

(i) its nationality on the date of consent; and

(ii) if the party is a natural person:

(A) his nationality on the date of the request; and

(B) that he did not have the nationality of the Contracting State party to the dispute either on the date of consent or on the date of the request; or

(iii) if the party is a juridical person which on the date of consent had the nationality of the Contracting State party to the dispute, the agreement of the parties that it should be treated as a national of another Contracting State for the purposes of the Convention;

(e) contain information concerning the issues in dispute indicating that there is, between the parties, a legal dispute arising directly out of an investment; and

(f) state, if the requesting party is a juridical person, that it has taken all necessary internal actions

to authorize the request.

(2) The information required by subparagraphs (1) (c), (1) (d) (iii) and (1) (f) shall be supported by documentation.

(3) "Date of consent" means the date on which the parties to the dispute consented in writing to submit it to the Centre; if both parties did not act on the same day, it means the date on which the second party acted.

Rules 3
Optional Information in the Request

The request may in addition set forth any provisions agreed by the parties regarding the number of conciliators or arbitrators and the method of their appointment as well as any other provisions agreed concerning the settlement of the dispute.

Rule 4
Copies of the Request

(1) The request shall be accompanied by five additional signed copies. The Secretary-General may require such further copies as he may deem necessary.

(2) Any documentation submitted with the request shall conform to the requirements of Administrative and Financial Regulation 30.

Rule 5

Acknowledgement of the Request

(1) On receiving a request the Secretary-General shall:

(a) send an acknowledgement to the requesting party;

(b) take no other action with respect to the request until he has received payment of the prescribed fee.

(2) As soon as he has received the fee for lodging the request, the Secretary-General shall transmit a copy of the request and of the accompanying documentation to the other party.

Rules 6

Registration of the Request

(1) The Secretary-General shall, subject to Rule 5(1) (b), as soon as possible, either:

(a) register the request in the Conciliation or the Arbitration Register and on the same day notify the parties of the registration; or

(b) if he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre, notify the parties of his refusal to register the request and of the reasons

therefore.

(2) A proceeding under the Convention shall be deemed to have been instituted on the date of the registration of the request.

Rule 7
Notice of Registration

The notice of registration of a request shall:

(a) record that the request is registered and indicate the date of the registration and of the dispatch of that notice;

(b) notify each party that all communications and notices in connection with the proceeding will be sent to the address stated in the request, unless another address is indicated to the Centre;

(c) unless such information has already been provided, invite the parties to communicate to the Secretary-General any provisions agreed by them regarding the number and the method of appointment of the conciliators or arbitrators;

(d) invite the parties to proceed, as soon as possible, to constitute a Conciliation Commission in accordance with Articles 29 to 31 of the Convention, or an Arbitral Tribunal in accordance with Articles 37 to 40;

(e) Remind the parties that the registration of the request is without prejudice to the power and functions of the Conciliation Commission or Arbitral Tribunal in regard to jurisdiction, competence and the merits; and

(f) be accompanied by a list of the members of the Panel of Conciliators or of Arbitrators of the Centre.

Rule 8
Withdrawal of the Request

The requesting party may, by written notice to the Secretary-General withdraw the request before it has been registered. The Secretary-General shall promptly notify the other party, unless, pursuant to Rule 5(1) (b), the request had not been transmitted to it.

Rule 9
Final Provisions

(1) The texts of these Rules in each official language of the Centre shall be equally authentic.

(2) These Rules may be cited as the "Institution Rules" of the Centre.



Annex (8)

Rules of Procedure for Conciliation Proceedings (Concilati0on rules)

قواعد التوفيق لدى المركز الدولى لتسوية منازعات الاستثمار

The Rules of Procedure for Conciliation Proceedings (the Conciliation Rules) of ICSID were adopted by the Administrative Council of the Centre pursuant to Article 6(1) (c) of the ICSID Convention.

The Conciliation Rules are supplemented by the Administrative and Financial Regulations of the Centre, in particular by Regulations 14-16, 22-31 and 34(1).

The Conciliation Rules cover the period of time from the dispatch of the notice of registration of a request for conciliation until a report is drawn up. The transactions previous to that time are to be regulated in accordance with the Institution Rules.

Conciliation Rules

Chapter I
Establishment of the Commission

Rule 1
General Obligations

(1) Upon notification of the registration of the request for conciliation, the parties shall, with all possible dispatch, proceed to constitute a Commission, with due regard to Section 2 of Chapter III of the Convention.

(2) Unless such information is provided in the request, the parties shall communicate to the Secretary-General as soon as possible any provisions agreed by them regarding the number of conciliators and the method of their appointment.

Rule 2
Method of Constituting the Commission in the Absence of Previous Agreement

(1) If the parties, at the time of the registration of the request for conciliation, have not agreed upon the number of conciliators and the method of their appointment, they shall, unless they agree otherwise, follow the following procedure:

(a) the requesting party shall, within 10 days after the registration of the request, propose to the other party the appointment of a sole conciliator or of a specified uneven number of conciliators and specify the method proposed for their appointment;

(b) within 20 days after receipt of the proposals made by the requesting party, the other party shall:

(i) accept such proposals; or

(ii) make other proposals regarding the number of conciliators and the method of their appointment;

(c) within 20 days after receipt of the reply containing any such other proposals, the requesting party shall notify the other party whether it accepts or rejects such proposals.

(2) The communications provided for in paragraph (1) shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General. The parties shall promptly notify the Secretary-General of the contents of any agreement reached.

(3) At any time 60 days after the registration of the request, if no agreement on another procedure is

reached, either party may inform the Secretary-General that it chooses the formula provided for in Article 29(2) (b) of the Convention. The Secretary-General shall thereupon promptly inform the other party that the Commission is to be constituted in accordance with that Article.

Rule 3
Appointment of Conciliators
To a Commission Constituted in Accordance with Convention Article 29 (2)(b)

(1) If the Commission is to be constituted in accordance with Article 29 (2) (b) of the Convention:

(a) either party shall, in a communication to the other party:

(i) name two persons, identifying one of them as the conciliator appointed by it and the other as the conciliator proposed to be President of the Commission; and

(ii) invite the other party to concur in the appointment of the conciliator proposed to the President of the Commission and to appoint another conciliator;

(b) promptly upon receipt of this communication

the other party shall, in its reply:

(i) name a person as the conciliator appointed by it; and

(ii) concur in the appointment of the conciliator proposed to be the President of the Commission or name another person as the conciliator proposed to be President;

(c) promptly upon receipt of the reply containing such a proposal, the initiating party shall notify the other party whether it concurs in the appointment of the conciliator proposed by that party to be the President of the Commission.

(2) The communications provided for in this Rule shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General.

Rule 4

Appointment of Conciliators by the Chairman of the Administrative Council

(1) If the Commission is not constituted within 90 days after the dispatch by the Secretary-General of the notice of registration, or such other period as the

parties may agree, either party may, through the Secretary-General, address to the Chairman of the Administrative Council a request in writing to appoint the conciliator or conciliators not yet appointed and to designate a conciliator to be the President of the Commission.

(2) The provision of paragraph (1) shall apply mutatis mutandis in the event that the parties have agreed that the conciliators shall elect the President of the Commission and they fail to do so.

(3) The Secretary-General shall forthwith send a copy of the request to the other party.

(4) The Chairman shall use his best efforts to comply with that request within 30 days after its receipt. Before he proceeds to make an appointment or designation, with due regard to Article 31(1) of the Convention, he shall consult both parties as far as possible.

(5) The Secretary-General shall promptly notify the parties of any appointment or designation made by the Chairman.

Rule 5
Acceptance of Appointments

(1) The party or parties concerned shall notify

the Secretary-General of the appointment of each conciliator and indicate the method of his appointment.

(2) As soon as the Secretary-General has been informed by a party or the Chairman of the Administrative Council of the appointment of a conciliator, he shall seek an acceptance from the appointee.

(3) If a conciliator fails to accept his appointment within 15 days, the Secretary-General shall promptly notify the parties, and if appropriate the Chairman, and invite them to proceed to the appointment of another conciliator in accordance with the method followed for the previous appointment.

Rule 6
Constitution of the Commission

(1) The Commission shall be deemed to be constituted and the proceeding to have begun on the date the Secretary-General notifies the parties that all the conciliators have accepted their appointment.

(2) Before or at the first session of the Commission, each conciliator shall sign a declaration in the following form:

"To the best of my knowledge there is no reason why I should not serve on the Conciliation Commission constituted by the International Centre for Settlement of Investment Disputes with respect to a dispute between ____________________ and ____________________.

"I shall keep confidential all information coming to may knowledge as a result of my participation in this proceeding, as well as the contents of any report drawn up by the Commission.

"I shall not accept any instruction of compensation with regard to the proceeding from any source except as provided in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and in the Regulations and Rules made pursuant thereto.

"A statement of may past and present professional, business and other relationships (if any) with the parties is attached hereto".

Any conciliator failing to sign such a declaration by the end of the first session of the Commission shall be deemed to have resigned.

Rule 7
Replacement of Conciliators

At any time before the Commission is constituted, each party may replace any conciliator appointed by it and the parties may be common consent agree to replace any conciliator. The procedure of such replacement shall be in accordance with Rules 1,5 and 6.

Rule 8
Incapacity or Resignation of Conciliators

(1) If a conciliator becomes incapacitated or unable to perform the duties of his office, the procedure in respect of the disqualification of conciliators set forth in Rule 9 shall apply.

(2) A conciliator may resign by submitting his resignation to the other members of the Commission and the Secretary-General. If the conciliator was appointed by one of the parties, the Commission shall promptly consider the reasons for his resignation and decide whether it consents thereto. The Commission shall promptly notify the Secretary-General of its decision.

Rule 9
Disqualification of Conciliators

(1) A party proposing the disqualification of a conciliator pursuant to Article 57 of the Convention shall promptly, and in any event before the Commission first recommends terms of settlement of the dispute to the parties or when the proceeding is closed (whichever occurs earlier), file its proposal with the Secretary-General, stating its reasons therefore.

(2) The Secretary-General shall forthwith:

(a) transmit the proposal to the members of the Commission and, if it related to a sole conciliator or to a majority of the members of the Commission, to the Chairman of the Administrative Council; and

(b) notify the other party of the proposal.

(3) The conciliator to whom the proposal relates may, without delay, furnish explanations to the Commission or the Chairman, as the case may be.

(4) Unless the proposal relates to a majority of the members of the Commission, the other members shall promptly consider and vote on the proposal in the absence of the conciliator concerned. If those

members are equally divided, they shall, through the Secretary-General, promptly notify the Chairman of the proposal, of any explanation furnished by the conciliator concerned and of their failure to reach a decision.

(5) Whenever the Chairman has to decide on a proposal to disqualify a conciliator, he shall use his best efforts to take that decision within 30 days after he has received the proposal.

(6) The proceeding shall be suspended until a decision has been taken on the proposal.

Rule 10
Procedure during a Vacancy on the Commission

(1) The Secretary-General shall forthwith notify the parties and, if necessary, the Chairman of the Administrative Council of the disqualification, death, incapacity or resignation of a conciliator and of the consent, if any, of the Commission to a resignation.

(2) Upon the notification by the Secretary-General of a vacancy on the Commission, the proceeding shall be or remain suspended until the vacancy has been filled.

Rule 11
Filling Vacancies On the Commission

(1) Except as provided in paragraph (2), a vacancy resulting from the disqualification, death, incapacity or resignation of a conciliator shall be promptly filled by the same method by which his appointment had been made.

(2) In addition to filling vacancies relating to conciliators appointed by him, the Chairman of the Administrative Council shall appoint a person from the Panel of Conciliators:

(a) to fill a vacancy caused by the resignation, without the consent of the Commission, of a conciliator appointed by a party; or

(b) at the request of either party, to fill any other vacancy, if no new appointment is made and accepted within 45 days of the notification of the vacancy by the Secretary-General.

(3) The procedure for filling a vacancy shall be in accordance with Rules 1,4(4), 4(5), 5 and, mutatis mutandis, 6(2).

Rule 12
Resumption of Proceeding
After Filling a Vacancy

As soon as a vacancy on the Commission has been filled, the proceeding shall continue from the point it has reached at the time the vacancy occurred. The newly appointed conciliator may, however, require that any hearings be repeated in whole or in part.

Chapter II
Working of the Commission

Rule 13
Sessions of the Commission

(1) The Commission shall hold its first session within 60 days after its constitution or such other period as the parties may agree. The dates of that session shaal be fixed by the President of the Commission after consultation with its members and the Secretary-General. If upon its constitution the Commission has no President because the parties have agree that the President shall be elected by its members, the Secretary-General shall fix the dates of that session. In both cases, the parties shall be consulted as far as possible.

(2) The dates of subsequent sessions shall be

determined by the Commission, after consultation with the Secretary-General and with the parties as far as possible.

(3) The Commission shall meet at the seat of the Centre or at such other place as may have been agreed by the parties in accordance with Article 63 of the Convention. If the parties agree that the proceeding shall be held at a place other than the Centre or an institution with which the Centre has made the necessary arrangements, they shall consult with the Secretary-General and request the approval of the Commission. Failing such approval, the Commission shall meet at the seat of the Centre.

(4) The Secretary-General shall notify the members of the Commission and the parties of the dates and place of the sessions of the Commission in good time.

Rule 14
Sittings of the Commission

(1) The President of the Commission shall conduct its hearings and preside at its deliberations.

(2) Except as the parties otherwise agree, the presence of a majority of the members of the Commission shall be required at its sittings.

(3) The President of the Commission shall fix the date and hour of its sittings.

Rules 15

Deliberations of the Commission

(1) The deliberations of the Commission shall take place in private and remain secret.

(2) Only members of the Commission shall take part in its deliberations. No other person shall be admitted unless the Commission decides otherwise.

Rules 16

Decisions of the Commission

(1) Decisions of the Commission shall be taken by a majority of the votes of all its members. Abstention shall count as a negative vote.

(2) Except as otherwise provided by these Rules or decided by the Commission, it may take any decision by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Commission.

Rules 17

Incapacity of the President

If at any time the President of the Commission

should be unable to act, his functions shall be performed by one of the other members of the Commission, acting in the order in which the Secretary-General had received the notice of their acceptance of their appointment to the Commission.

Rules 18

Representation of the Parties

(1) Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretary-General, who shall promptly inform the Commission and the other party.

(2) For the purposes of these, Rules, the expression "party" includes, where the context so admits, an agent, counsel or advocate authorized to represent that party.

Chapter III

General Procedural Provisions

Rule 19

Procedural Order

The Commission shall make the orders required for the conduct of the proceeding.

Rule 20

Preliminary Procedural Consultation

(1) As early as possible after the constitution of a Commission, its President shall endeavor to ascertain the views of the parties regarding questions of procedure. For this purpose he may request the parties to meet him. He shall, particular, seek their views on the following matters:

(a) the number of members of the Commission required to constitute q quorum at its sittings;

(b) the language or languages to be used in the proceeding;

(c) the evidence, oral or written, which each party intends to produce or to request the Commission to call for, and the written statements which each party intends to file, as well as the time limits within which such evidence should be produced and such statements field;

(d) the number of copies desired by each party of instruments filed by the other; and

(e) the manner in which the record of the hearings shall be kept.

(2) In the conduct of the proceeding the

Commission shall apply any agreement between the parties on procedural matters, except as otherwise provided in the Convention or the Administrative and Financial Regulations.

Rules 21
Procedural Languages

(1) The parties may agree on the use of one or two languages to be used in the proceeding, provided that, if they agree on any language that is not an official language of the Centre, the Commission, after consultation with the Secretary-General, gives its approval. If the parties do not agree on any such procedural language, each of them may select one of the official languages (i.e., English, French and Spanish) for this purpose.

(2) If two procedural languages are selected by the partiers, any instrument may be filed in either language. Either language may be used at the hearings, subject, if the Commission so requires, to translation and interpretation. The recommendations and the report of the Commission shall be rendered and the record kept in both procedural languages, both versions being equally authentic.

Chapter IV
Conciliation Procedures

(1) In order to clarify the issues in dispute between the parties, the Commission shall hear the parties and shall endeavor to obtain any information that might serve this end. The parties shall be associated with its work as closely as possible.

(2) In order to bring about agreement between the parties, the Commission may, from time to time at any stage of the proceeding, make-orally or in writing-recommendations to the parties. It may recommend that the parties accept specific terms of settlement or that they refrain, while it seeks to bring about agreement between them, from specific acts that might aggravate the dispute; it shall point out to the parties the arguments in favor of its recommendations. It may fix time limits within which each party shall inform the Commission of its decision concerning the recommendations made.

(3) The Commission, in order to obtain information that might enable it to discharge its functions, may at any stage of the proceeding:

(a) request from either party oral explanations, documents and other information;

(b) request evidence from other persons; and

(c) with the consent of the party concerned, visit any place connected with the dispute or conduct inquiries there, provided that the parties may participate in any such visits and inquiries.

Rule 23

Cooperation of the Parties

(1) The parties shall cooperate in good faith with the Commission and, in particular, at its re3quest furnish all relevant documents, information and explanations as well as use the means at their disposal to enable the Commission to hear witnesses and experts whom it desires to call. The parties shall also facilitate visits to and inquiries at any place connected with the dispute that the Commission desires to undertake.

(2) The parties shall comply with any time limits agreed with or fixed by the Commission.

Rule 25

Transmission of the Request

AS soon as the Commission is constituted, the Secretary-General shall transmit to each member a copy of the request by which the proceeding was

initiated, of the supporting documentation, of the notice of registration and of any communication received from either party in response thereto.

Rule 25
Written Statements

(1) Upon the constitution of the Commission, its President shall invite each party to file, within 30 days, or such longer time limit as he may fix, written statement of its position. If, upon its constitution, the Commission has no President, such invitation shall be issued and any such longer time limit shall be fixed by the Secretary-General. At any stage of the proceeding, within such time limits as the Commission shall fix, either party may file such other written statements as it deems useful and relevant.

(2) Except as otherwise provided by the Commission after consultation with the parties and the Secretary-General, every written statement or other instrument shall be filed in the form of a signed original accompanied by additional copies whose number shall be two more than the number of members of the Commission.

Rule 26

Supporting Documentation

(1) Every written statement or other instrument filed by a party may be accompanied by supporting documentation, in such form and number of copies as required by Administrative and Financial Regulation 30.

(2) Supporting documentation shall ordinarily be field together with the instrument to which it relates, and in any case within the time limit fixed for the filing of such instrument.

Rule 27

Hearings

(1) The hearings of the Commission shall take place in private and, except as the parties otherwise agree, shall remain secret.

(2) The Commission shall decide, with the consent of the parties, which other persons beside the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Commission may attend the hearings.

Rule 28

Witnesses and Experts

(1) Each party may, at any stage of the proceeding, request that the Commission hear the witnesses and experts whose evidence the party considers relevant. The Commission shall fix a time limit within which such hearing shall take place.

(2) Witnesses and experts shall, as a rule, be examined before the Commission by the parties under the control of its President. Questions may also be put to them by any member of the Commission.

(3) If a witness or expert is unable to appear before it, the Commission, in agreement with the parties, may make appropriate arrangements for the evidence to be given in a written deposition or to be taken be examination elsewhere. The parties may participate in any such examination.

Chapter V

Termination of the Proceeding

Rule 29

Objections to Jurisdiction

(1) Any objection that the dispute is not within the jurisdiction of the Centre or, for other reasons, is

not within the competence of Commission shall be made as early as possible. A party shall file the objection with the Secretary-General no later than in its first written statement or at the first hearing if that occurs earlier, unless the facts on which the objection is based are unknown to the party at that time.

(2) The Commission may on its own initiative consider, at any stage of the proceeding, whether the dispute before it is within the jurisdiction of the Centre and within its own competence.

(3) Upon the formal raising of an objection, the proceeding on the merits shall be suspended. The Commission shall obtain the views of the parties on the objection.

(4) The Commission may deal with the objection as a preliminary question or join it to the merits of the dispute. If the Commission overrules the objection or joins it to the merits, it shall resume consideration of the latter without delay.

(5) If the Commission decides that the dispute is not within the jurisdiction of the Centre or not within its own competence, it shall close the proceeding and draw up report to that effect, in which it shall state its reasons.

Rule 30

Closure of the Proceeding

(1) If the parties reach agreement on the issues in dispute, the Commission shall close the proceeding and draw up its report noting the issues in dispute and recording that the parties have reached agreement. At the request of the parties, the report shall record the detailed terms and conditions of their agreement.

(2) If at any stage of the proceeding it appears to the Commission that there is no likelihood of agreement between the parties, the Commission shall, after notice to the parities, close the proceeding and draw up its report noting the submission of the dispute to conciliation and recording the failure of the parties to reach agreement.

(3) If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, close the proceeding and draw up its report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 31

Preparation of the Report

The report of the Commission shall be drawn up and

signed within 60 days after the closure of the proceeding.

Rule 32
The Report

(1) The report shall be in writing and shall contain, in addition to the material specified in paragraph (2) and in Rule 30:

(a) a precise designation of each party;

(b) a statement that the Commission was established under the Convention, and a description of the method of its constitution;

(c) the names of the members of the Commission, and an identification of the appointing authority of each;

(d) the names of the agents, counsel and advocates of the parties;

(e) the dates and place of the sittings of the Commission; and

(f) a summary of the proceeding.

(2) The report shall also record any agreement of the parties pursuant to Article 35 of the Convention, concerning the use in other proceedings of the views

expressed or statements or admissions or offers of settlement made in the proceeding before the Commission or of the report or any recommendation made by the Commission.

(3) The report shall be signed by the members of the Commission; the date of each signature shall be indicated. The fact that a member refuses to sign the report shall be recorded therein.

Rule 33

Communication of the Report

(1) Upon signature by the last conciliator to sign, the Secretary-General shall promptly:

(a) authenticate the original text of the report and deposit it in the archives of the Centre; and

(b) dispatch a certified copy to each party, indicating the date of dispatch on the original text and on all copies.

(2) The Secretary-General shall, upon request, make available to a party additional certified copies of the report.

(3) The centre shall not publish the report without the consent of the parties.

Chapter VI
General Provisions

Rule 34
Final Provisions

(1) The texts of these Rules in each official language of the Centre shall be equally authentic.

(2) These Rules may be cited as the "Conciliation Rules" of the Centre.

Annex (9)
ACSID Rules of Procedure for Arbitration Proceedings (Arbitration rules)

The Rules of Procedure for Arbitration Proceedings (the Arbitration Rules) of ICSID were adopted by the Administrative Council of the Centre pursuant to Article 6(1) (c) of the ICSID Convention.

The Arbitration Rules are supplemented by the Administrative and Financial Regulations of the Centre, in particular by Regulations 14-16, 22-31 and 34(1).

The Arbitration Rules cover the period of time from the dispatch of the notice of registration of a request for arbitration until an award is rendered and all challenges possible to it under the Convention have been exhausted. The transactions previous to that time are to be regulated in accordance with the Institution Rules.

Arbitration Rules

Chapter I
Establishment of the Tribunal

Rule 1
General Obligations

(1) Upon notification of the registration of the request for arbitration, the parties shall, with all possible dispatch, proceed to constitute a Tribunal, with due regard to Section 2 of Chapter IV of the Convention.

(2) Unless such information is provided in the request, the parties shall communicate to the Secretary-General as soon as possible any provisions agreed by them regarding the number of arbitrators and the method of their appointment.

(3) The majority of the arbitrators shall be nationals of States other than the State party to the dispute and of the State whose national is a party to the dispute, unless the sole arbitrator or each individual member of the Tribunal is appointed by agreement of the parties. Where the Tribunal is to consist of three members, a national of either of these States may not be appointed as an arbitrator by a party without the agreement of the other party to the

dispute. Where the Tribunal is to consist of five or more members, nationals of either or these States may not be appointed as arbitrators by a party if appointment by the may not be appointed as arbitrators by a party if appointment by the other party of the same number of arbitrators of either of these nationalities would result in a majority of arbitrators of these nationalities.

(4) No person who had previously acted as a conciliator or arbitrator in any proceeding for the settlement of the dispute may be appointed as a member of the Tribunal.

Rule 2
Method of Constituting
The Tribunal in the Absence
of Previous Agreement

(1) If the parties, at the time of the registration of the request for arbitration, have not agreed upon the number of arbitrators and the method of their appointment, they shall, unless they agree otherwise, follow the following procedure:

(a) the requesting party shall, within 10 days after the registration of the request, propose to the other party the appointment of a sole arbitrator or of a

specified uneven number of arbitrators and specify the method proposed for their appointment;

(b) within 20 days after receipt of the proposals made by the requesting party, the other party shall:

(i) accept such proposals; or

(ii) make other proposals regarding the number of arbitrators and the method of their appointment;

(c) within 20 days after receipt of the reply containing any such other proposals, the requesting party shall notify the other party whether it accepts or rejects such proposals.

(2) The communications provided for in paragraph (1) shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General. The parties shall promptly notify the Secretary-General of the contents of any agreement reached.

(3) At any time 60 days after the registration of the request, if no agreement on another procedure is reached, either party may inform the Secretary-General that it chooses the formula provided for in Article 37(2) (b) of the Convention. The Secretary-

General shall thereupon promptly inform the other party that the Tribunal is to be constituted in accordance with that Article.

Rule 3
Appointment of Arbitrators
To a Tribunal Constituted in Accordance
With Convention Article 37(2)(b)

(1) If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention:

(a) either party shall in a communication to the other party:

(i) name two persons, identifying one of them, who shall not have the same nationality as nor be a national of either party, as the arbitrator appointed by it, and the other as the arbitrator proposed to be the President of the Tribunal; and

(ii) invite the other party to concur in the appointment of the arbitrator proposed to be the President of the Tribunal and to appoint another arbitrator;

(b) promptly upon receipt of this communication the other party shall, in its reply:

(i) name a person as the arbitrator appointed by

it, who shall not have the same nationality as nor be a national of either party; and

(ii) concur in the appointment of the arbitrator proposed to be the President of the Tribunal or name another person as the arbitrator proposed to be President;

(c) promptly upon receipt of the reply containing such a proposal, the initiating party shall notify the other party whether it concurs in the appointment of the arbitrator proposed by that party to be the President of the Tribunal.

(2) The communications provided for in this Rule shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General.

Rule 4
Appointment of Arbitrators
By the Chairman of
The Administrative Council

(1) If the Tribunal is not constituted within 90 days after the dispatch by the Secretary-General of the notice of registration, or such other period as the

parties may agree, either party may, through the Secretary-General, address to the Chairman of the Administrative Council a request in writing to appoint the arbitrator or arbitrators not yet appointed and to designate an arbitrator to be the President of the Tribunal.

(2) The provision of paragraph (1) shall apply mutatis mutandis in the event that the parties have agreed that the arbitrators shall elect the President of the Tribunal and they fail to do so.

(3) The Secretary-General shall forthwith send a copy of the request to the other party.

(4) The Chairman shall use his best efforts to comply with that request within 30 days after its receipt. Before he proceeds to make an appointment or designation, with due regard to Article 38 and 40 (1) of the Convention, he shall consult both parties as far as possible.

(5) The Secretary-General shall promptly notify the parties of any appointment or designation made by the Chairman.

Rule 5

Acceptance of Appointments

(1) The party of parties concerned shall notify the Secretary-General of the appointment of each arbitrator and indicate the method of his appointment.

(2) As soon as the Secretary-General has been informed by a party or the Chairman of the Administrative Council of the appointment of an arbitrator, he shall seek an acceptance from the appointee.

(3) If an arbitrator fails to accept his appointment within 15 days, the Secretary-General shall promptly notify the parties, and if appropriate the Chairman, and invite them to proceed to the appointment of another arbitrator in accordance with the method followed for the previous appointment.

Rule 6

Constitution of the Tribunal

(1) The Tribunal shall be deemed to be constituted and the proceed to have begun on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointment.

(2) Before or at the first session of the Tribunal,

each arbitrator shall sign a declaration in the following form:

"To the best of my knowledge there is no reason why I should not serve on the Arbitral Tribunal constituted by the International Centre for Settlement of Investment Disputes with respect to a dispute between ________________ and______________.

"I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any award made by the Tribunal.

"I shall judge fairly as between the parties, according to the applicable law, and shall not accept any instruction or compensation with regard to the proceeding from any source except as provided in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and in the Regulations and Rules made pursuant thereto.

"A statement of my past and present professional, business and other relationships (if any) with the parties is attached hereto".

Any arbitrator failing to sign a declaration by the end of the first session of the Tribunal shall be deemed

to have resigned.

Rules 7
Replacement of Arbitrators

At any time before the Tribunal is constituted, each party may replace any arbitrator appointed by it and the parties may be common consent agree to replace any arbitrator. The procedure of such replacement shall be in accordance with Rules 1,5 and

Rule 8
Incapacity or Resignation of Arbitrators

(1) If an arbitrator becomes incapacitated or unable to perform the duties of his office, the procedure in respect of the disqualification of arbitrators set forth in Rule 9 shall apply.

(2) An arbitrator may resign by submitting his resignation to the other members of the Tribunal and the Secretary-General. If the arbitrator was appointed by one of the parties, the Tribunal shall promptly consider the reasons for his resignation and decide whether it consents thereto. The Tribunal shall promptly notify the Secretary-General of its decision.

Rule 9

Disqualification of Arbitrators

(1) A party proposing the disqualification of a arbitrator pursuant to Article 57 of the Convention shall promptly, and in any event before the proceeding is declared closed, file its proposal with the Secretary-General, stating its reasons therefore.

(2) The Secretary-General shall forthwith:

(a) transmit the proposal to the members of the Tribunal and, if it relates to a sole arbitrator or to a majority of the members of the Tribunal, to the Chairman of the Administrative Council; and

(b) notify the other party of the proposal.

(3) The arbitrator to whom the proposal relates may, without delay, furnish explanations to the Tribunal or the Chairman, as the case may be.

(4) Unless the proposal relates to a majority of the members of the Tribunal, the other members shall promptly consider and vote on the proposal in the absence of the arbitrator concerned. If those members are equally divided, they shall, through the Secretary-General, promptly notify the Chairman of the proposal, of any explanation furnished by the

arbitrator concerned and of their failure to reach a decision.

(5) Whenever the Chairman has to decide on a proposal to disqualify an arbitrator, he shall use his best efforts to take that decision within 30 days after he has received the proposal.

(6) The proceeding shall be suspended until a decision has been taken on the proposal.

Rule 10
Procedure during a Vacancy On the Tribunal

(1) The Secretary-General shall forthwith notify the parties and, if necessary, the Chairman of the Administrative Council of the disqualification, death, incapacity or resignation of an arbitrator and of the consent, if any, of the Tribunal to a resignation.

(2) Upon the notification by the Secretary-General of a vacancy on the Tribunal, the proceeding shall be or remain suspended until the vacancy has been filled.

Rule 11
Filling Vacancies On the Tribunal

(1) Except as provided in paragraph (2), a

vacancy resulting from the disqualification, death, incapacity or resignation of an arbitrator shall be promptly filled by the same method by which his appointment had been made.

(2) In addition to filling vacancies relating to arbitrators appointed by him, the Chairman of the Administrative Council shall appoint a person from the Panel of Arbitrators:

(a) to fill a vacancy caused by the resignation, without the consent of the Tribunal, of an arbitrator appointed by a party; or

(b) at the request of either party, to fill any other vacancy, if no new appointment is made and accepted within 45 days of the notification of the vacancy by the Secretary-General.

(3) The procedure for filling a vacancy shall be in accordance with Rules 1,4(4), 4(5), 5 and, mutatis mutandis, 6(2).

Rule 12
Resumption of Proceeding after Filling a Vacancy

As soon as a vacancy on the Tribunal has been filled, the proceeding shall continue from the point it

has reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral procedure be recommenced, if this had already been started.

Chapter II
Working of the Tribunal

Rule 13
Session of the Tribunal

(1) The Tribunal shall hold its first session within 60 days after its constitution or such other period as the parties may agree. The dates of that session shall be fixed by the President of the Tribunal after consultation with its members and the Secretary-General. If upon its constitution the Tribunal has no President because the parties have agreed that the President shall be elected by its members, the Secretary-General shall fix the dates of that session. In both cases, the parties shall be consulted as far as possible.

(2) The dates of subsequent sessions shall be determined by the Tribunal, after consultation with the Secretary-General and with the parties as far as possible.

(3) The tribunal shall meet at the seat of the Centre or at such other place as may have been agreed by the parties in accordance with Article 63 of the Convention. If the parties agree that the proceeding shall be held at a place other than the Centre or an institution with which the Centre has made the necessary arrangements, they shall consult with the Secretary-General and request the approval of the Tribunal. Failing such approval, the Tribunal shall meet at the seat of the Centre.

(4) The Secretary-General shall notify the members of the Tribunal and the parties of the dates and place of the sessions of the Tribunal in good time.

Rule 14
Sittings of the Tribunal

(1) The President of the Tribunal shall conduct its hearings and preside at its deliberations.

(2) Except as the parties otherwise agree, the presence of a majority of the members of the Tribunal shall be required at its sitting.

(3) The President of the Tribunal shall fix the date and hour of its sittings.

Rule 15
Deliberations of the Tribunal

(1) The deliberations of the Tribunal shall take place in private and remain secret.

(2) Only members of the Tribunal shall take part in its deliberations, No other person shall be admitted unless the tribunal decides otherwise.

Rule 16
Decision of the Tribunal

(1) Decisions of the Tribunal shall be taken by a majority of the votes of all its members. Abstention shall count as a negative vote.

(2) Except as otherwise provided by these Rules or decided by the Tribunal, it may take any decision by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Tribunal.

Rule17
Incapacity of the President

If at any time the President of the Tribunal should be unable to act, his functions shall be performed by one of the other members of the Tribunal, acting in the order in which the Secretary-

General had received the notice of their acceptance of their appointment to the Tribunal.

Rule 18
Representation of the Parties

(1) Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretary-General, who shall promptly inform the Tribunal and the other party.

(2) For the purposes of these Rules, the expression "party" includes, where the context so admits, agent, counsel or advocate authorized toe represent that party.

Chapter III
General Procedural Provisions

Rule 19
Procedural Orders

The Tribunal shall make the orders required for the conduct of the proceeding.

Rule 20
Preliminary Procedural Consultation

(1) As early as possible after the constitution of a

Tribunal, President shall endeavor to ascertain the views of the parties regarding questions of procedure. For this purpose he may request the parties to meet him. He shall, in particular, seek their views on the following matters:

(a) the number of members of the Tribunal required to constitute a quorum at its sittings;

(b) the language or language to be used in the proceeding;

(c) the number and sequence of the pleadings and the time limits within which they are to be field.

(d) the number of copies desired by each party of instruments filed by the other;

(e) dispensing with the written or the oral procedure;

(f) the manner in which the cost of the proceeding is to be apportioned; and

(g) the manner in which the record of the hearings shall be kept.

(2) In the conduct of the proceeding the Tribunal shall apply any agreement between the parties on procedural matters, except as otherwise provided in

the Convention or the Administrative and Financial Regulations.

Rule 21

Pre-Hearing Conference

(1) At the request of the Secretary-General or at the discretion of the president of the Tribunal, a pre-hearing conference between the Tribunal and the parties may be held to arrange for an exchange of information and the stipulation of uncontested facts in order to expedite the proceeding.

(2) At the request of the parties, a pre-hearing conference between the Tribunal and the parties, duly represented by their authorized representatives, may be held to consider the issues in dispute with a view to reaching an amicable settlement.

Rule 22

Procedural Language

(1) The parties may agree on the use of one or two languages to be used in the proceeding, provided, that, if they agree on any language that is not an official language of the Centre, the Tribunal, after consultation with the Secretary-General, gives its approval. If the parties do not agree on any such

procedural language, each of them may select on of the official languages (i.e., English, French and Spanish) for this purpose.

(2) If two procedural languages are selected by the parties, any instrument may be field in either language. Either language may be used at the hearings, subject, if the Tribunal so requires, to translation and interpretation. The order and the award of the Tribunal shall be rendered and the record kept in both procedural languages, both versions being equally authentic.

Rule 23
Copies of Instruments

Except as otherwise provided by the Tribunal after consultation with the parties and the Secretary-General, every request, pleading, application, written observation, supporting documentation, if any, or other instrument shall be filed in the form of a signed original accompanied by the following number of additional copies:

(a) before the number of members of the Tribunal has been determined: five;

(b) after the number of members of the Tribunal

has been determined: two more than the number of its members.

Rule 24
Supporting Documentation

Supporting documentation shall ordinarily be field together with the instrument to which it relates, and in any case within the time limit fixed for the filing of such instrument.

Rule 25
Correction of Errors

An accidental error in any instrument or supporting document may, with the consent of the other party or by leave of the Tribunal, be corrected at any time before the award is rendered.

Rule 26
Time Limits

(1) Where required, time limits shall be fixed by the Tribunal by assigning dates for the completion of the various steps in the proceeding. The Tribunal may delegate his power to its President.

(2) The Tribunal may extend any time limit that it has fixed. If the Tribunal is not in session, this power shall be exercised by its President.

(3) Any step taken after expiration of the applicable time limit shall be disregarded unless the Tribunal, in special circumstances and after giving the other party an opportunity of stating its views, decides otherwise.

Rule 27
Waiver

A party which knows or should have known that a provision of the Administrative and Financial Regulations of these Rules, of any other rules or agreement applicable to the proceeding, or of an order of the Tribunal has not been complied with and which fails to state promptly its objections thereto, shall be deemed-subject to Article 45 of the Convention-to have waived its rights to object.

Rule 28
Cost of Proceeding

(1) Without prejudice to the final decision on the payment of the cost of the proceeding, the Tribunal may, unless otherwise agreed by the parties, decide:

(a) at any stage of the proceeding, the portion which each party shall pay, pursuant to Administrative and Financial Regulation 14, of the fees and expenses

of the Tribunal and the charges for the use of the facilities of the Centre;

(b) with respect to any part of the proceeding, that the related costs (as determined by the Secretary-General) shall be borne entirely or in particular share by one of the parties.

(2) Promptly after the closure of the proceeding, each party shall submit to the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding and the Secretary-General shall submit to the Tribunal an account of all amounts paid by each party to the Centre and of all costs incurred by the Centre of the proceeding. The Tribunal may, before the award has been rendered, request the parties and the Secretary-General to provide additional information concerning cost of the proceeding.

Chapter IV
Written and Oral Procedures

Rule 29
Normal Procedures

Except if the parties otherwise agree, he proceeding shall comprise two distinct phases: a written procedure followed by an oral one.

Rule 30
Transmission of the Request

As soon as the Tribunal is constituted, the Secretary-General shall transmit to each member a copy of the request by which the proceeding was initiated, of the supporting documentation, of the notice of registration and of any communication received from either party in response thereto.

Rule 31
The written Procedure

(1) In addition to the request for arbitration, the written procedure shall consist of the following pleadings, field within time limits set by the Tribunal:

(a) a memorial by the requesting party;

(b) a counter-memorial by the other party;

(c) a reply by the requesting party; and

(d) a rejoinder by the other party.

(2) If the request was made jointly, each party shall, within the same time limit determined by the Tribunal, file its memorial and, it the parties so agree or the Tribunal deems it necessary, its reply; however, the parties may instead agree that one of them shall,

for the purposes of paragraph (1), be considered as the requesting party.

(3) A memorial shall contain: a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder shall contain an admission or denial of the facts stated in the last previous pleading; any additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions.

Rule 32
The Oral Procedure

(1) The oral procedure shall consist of the hearing by the Tribunal of the parties, their agents, counsel and advocates, and of witnesses and experts.

(2) The Tribunal shall decide, with the consent of the parties, which other persons besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Tribunal may attend the hearings.

(3) The members of the Tribunal may, during the hearings, put questions to the parties, their agents, counsel and advocates, and ask them for explanations.

Rule 33
Marshalling of Evidence

Without prejudice to the rules concerning the production of documents, each party shall, within time limits fixed by the Tribunal, communicate to the Secretary-General, for transmission to the Tribunal, and the other party, precise information regarding the evidence which it intends to produce and that which it intends to request the Tribunal to call for, together with an indication of the points to which such evidence will be directed.

Rule 34
Evidence: General Principles

(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.

(2) The Tribunal may, if it deems it necessary at any stage of the proceeding:

(a) call upon the parties to produce documents, witnesses and experts; and

(b) visit any place connected with the dispute or conduct inquiries there.

(3) The parties shall cooperate with the Tribunal

in the production of the evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure.

(4) Expenses incurred in producing evidence and in taking other measures in accordance with paragraph (2) shall be deemed to constitute part of the expenses incurred by the parties within the meaning of Article 61(2) of the Convention.

Rule 35
Examination of Witnesses and Experts

(1) Witnesses and experts shall be examined before the Tribunal by the parties under the control of its President. Questions may also be put to them by any member of the Tribunal.

(2) Each witness shall make the following declaration before giving his evidence:

"I solemnly declare upon my honour and conscience that I shall speak the truth, the whole truth and nothing but the truth".

(3) Each expert shall make the following declaration before making his statement:

"I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief".

Rule 36
Witnesses and Experts: Special Rules

Notwithstanding Rule 35 the Tribunal may:

(a) admit evidence given by a witness or expert in a written deposition; and

(b) with the consent of both parties, arrange for the examination of a witness or expert otherwise than before the Tribunal itself. The Tribunal shall define the subject of the examination, the time limit, the procedure to be followed and other particulars. The parties may participate in the examination.

Rule 37
Visits and Inquiries

If the Tribunal considers it necessary to visit any place connected with the dispute or to conduct an inquiry there, it shall make an order to this effect. The order shall define the scope of the visit or the subject of the inquiry, the time limit, the procedure to be followed and other particulars. The parties may participate in any visit or inquiry.

Rule 38
Closure of the Proceeding

(1) When the presentation of the case by the parties is completed, the proceeding shall be declared closed.

(2) Exceptionally, the Tribunal may, before the award has been rendered, reopen the proceeding on the ground that new evidence is forthcoming of such a nature as to constitute a decisive factor, or that there is a vital need for clarification on certain specific points.

Chapter V
Particular Procedures

Rule 39
Provisional Measures

(1) At any time during the proceeding a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.

(2) The Tribunal shall give priority to the consideration of a request made pursuant to paragraph

(1).

(3) The Tribunal may also recommend provisional measures on its own initiative or recommend measures other than those specified in a request. It may at any time modify or revoke its recommendations.

(4) The Tribunal shall only recommend provisional measures, or modify or revoke its recommendations, after giving each party an opportunity of presenting its observations.

(5) Nothing in this Rule shall prevent the parties, provided that they have so stipulated in the agreement recording their consent, from requesting any judicial or other authority to order provisional measures, prior to the institution of the proceeding, or during the procedures, prior to the institution of the proceeding, or during the proceeding, for the preservation of their respective rights and interests.

Rule 40
Ancillary Claims

(1) Except as the parties otherwise agree, a party may present an incidental or additional claim or counter-claim arising directly out of the subject-matter

of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and is otherwise within the jurisdiction of the Centre.

(2) An incidental or additional claim shall be presented not later than in the reply and a counter-claim no later than in the counter-memorial, unless the Tribunal, upon justification by the party presenting the ancillary claim and upon considering any objection of the other party, authorizes the presentation of the claim at a later stage in the proceeding.

(3) The Tribunal shall fix a time limit within which the party against which an ancillary claim is presented may file its observations thereon.

Rule 41

Objections to Jurisdiction

(1) Any objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or, for other reasons, is not within the competence of the Tribunal shall be made as early as possible. A party shall file the objection with the Secretary-General no later than the expiration of the time limit fixed for the filing of the counter-memorial, or, if the objection relates to an ancillary claim, for the filing of the rejoinder-unless the facts on which the

objection is based are unknown to the party at that time.

(2) The Tribunal may on its own initiative consider, at any stage of the proceeding, whether the dispute or any ancillary claim before it is within the jurisdiction of the Centre and within its own competence.

(3) Upon the formal raising of an objection relating to the dispute, the proceeding on the merits shall be suspended. The President of the Tribunal, after consultation with its other members, shall fix a time limit within which the parties may file observations on the objection.

(4) The Tribunal shall decide whether or not the further procedures relating to the objection shall be oral. It may deal with the objection as a preliminary question or join it to the merits of the dispute. If the Tribunal overrules the objection or joins it to the merits, it shall once more fix time limits for the further procedures.

(5) If the Tribunal decides that the dispute is not within the jurisdiction of the Centre or not within its own competence, it shall render an award to that effect.

Rule 42
Default

(1) If a party (in this called the "defaulting party") fails to appear or to present its case at any stage of the proceeding, the other party may, at any time prior to the discontinuance of the proceeding, request the Tribunal to deal with the questions submitted to it and to render an award.

(2) The Tribunal shall promptly notify the defaulting party of such a request. Unless it is satisfied that party does not intend to appear or to present its case in the proceeding, it shall, at the same time, grant a period of grace and to this end:

(a) if that party had failed to file a pleading or any other instrument within the time limit fixed therefore, fix a new time limit for its filing; or

(b) if that party had failed to appear or present its case at a hearing, fix a new date for the hearing.

The period of grace shall not, without the consent of the other party, exceed 60 days.

(3) After the expiration of the period of grace or when, in accordance with paragraph (2), no such period is granted, the Tribunal shall resume the

consideration of the dispute. Failure of the defaulting party to appear or to present its case shall not be deemed an admission of the assertions made by the other party.

(4) The Tribunal shall examine the jurisdiction of the Centre and its own competence in the dispute and, if it is satisfied, decide whether the submissions made are well-founded in fact and in law. To this end, it may, at any stage of the proceeding, call on the party appearing to file observations, produce evidence or submit oral explanations.

Rule 43
Settlement and Discontinuance

(1) If, before the awards is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, n an order take note of the discontinuance of the proceeding.

(2) If the parties file with the Secretary-General the full and signed text of their settlement and in writing request the Tribunal to embody such settlement in an award, the Tribunal may record the settlement in the form of its award.

Rule 44
Discontinuance at Request of a Party

If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.

Rule 45
Discontinuance for Failure
Of Parties to Act

If The parties fail to take any steps in the proceeding during six consecutive months or such period as they may agree with the approval of the Tribunal, or of the Secretary-General if the Tribunal has not yet been constituted, they shall be deemed to have discontinued the proceeding and the Tribunal, or if appropriate the Secretary-General, shall, after notice to the parties, in an order take note of the discontinuance.

Chapter VI
The Award

Rule 46
Preparation of the Award

The award (including any individual or dissenting opinion) shall be drawn up and signed within 120 days after closure of the proceeding. The Tribunal may, however, extend this period by a further 60 days if it would otherwise be unable to draw up the award.

Rule 47
The Award

(1) The award shall be in writing and shall contain:

(a) a precise designation of each party;

(b) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution;

(c) the name of each member of the Tribunal, and an identification of the appointing authority of each;

(d) the names of the agents, counsel and

advocates of the parties;

(e) the dates and place of the sittings of the Tribunal;

(f) a summary of the proceeding;

(g) a statement of the facts as found by the Tribunal;

(h) the submissions of the parties;

(i) the decision of the Tribunal on every question submitted to it, together with the reasons upon which the decision is based; and

(j) any decision of the Tribunal regarding the cost of the proceeding.

(2) The award shall be signed by the members of the Tribunal who voted for it; the date of each signature shall be indicated.

(3) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

Rule 48
Rendering of the Award

(1) Upon signature by the last arbitrator to sign, the Secretary-General shall promptly:

(a) authenticate the original text of the award and deposit it in the archives of the Centre, together with any individual opinions and statements of dissent; and

(b) dispatch a certified copy of the award (including individual opinions and statements of dissent) to each party, indicating the date of dispatch on the original text and on all copies.

(2) The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

(3) The Secretary-General shall, upon request, make available to a party additional certified copies of the award.

(4) The Centre shall not publish the award without the consent of the parties. The Centre may, however, include in its publications excerpts of the legal rules applied by the Tribunal.

Rule 49

Supplementary Decisions and Rectification

(1) Within 45 days after the date on which the award was rendered, either party may request, pursuant to Article 49(2) of the Convention, a supplementary decision on, or the rectification of, the

award. Such a request shall be addressed in writing to the Secretary-General. The request shall:

(a) identify the award to which it relates;

(b) indicate the date of the request;

(c) state in detail:

(i) any question which, in the opinion of the requesting party, the Tribunal omitted to decide in the award; and

(ii) any error in the award which the requesting party seeks to have rectified; and

(d) be accompanied by a fee for lodging the request.

(2) Upon receipt of the request and of the lodging fee, the Secretary-General shall forthwith:

(a) register the request;

(b) notify the parties of the registration;

(c) transmit to the other party a copy of the request and of any accompanying documentation; and

(d) transmit to each member of the Tribunal a copy of the notice of registration, together with a copy of the request and of any accompanying

documentation.

(3) The President of the Tribunal shall consult the members on whether it is necessary for the Tribunal to meet in order to consider the request. The Tribunal shall fix a time limit for the parties to file their observations on the request and shall determine the procedure for its consideration.

(4) Rules 46-48 shall apply, mutatis mutandis, to any decision of the Tribunal pursuant to this Rule.

(5) If a request is received by the Secretary-General more than 45 days after the award was rendered, he shall refuse to register the request and so inform forthwith the requesting party.

Chapter VII
Interpretation, Revision and Annulment of the Award

(1) An application for the interpretation, revision or annulment of an award shall be addressed in writing to the Secretary-General and shall:

(a) identify the award to which it relates;

(b) indicate the date of the application;

(c) state in detail:

(i) in an application for interpretation, the precise points in dispute;

(ii) in an application for revision, pursuant to Article 51(1) of the Convention, the change sought in the award, the discovery of some fact of such a nature as decisively to affect the award, and evidence that when the award was rendered that fact was unknown to the Tribunal and to the applicant, and that the applicant's ignorance of that fact was not due to negligence;

(ii) in an application for annulment, pursuant to Article 52(1) of the Convention, the grounds on which it is based. These grounds are limited to the following;

- that the Tribunal was not properly constituted;

- that the Tribunal has manifestly exceeded its powers:

- that there was corruption on the part of a member of the Tribunal;

- that there has been a serious departure from a fundamental rule of procedure;

- that the award has failed to state the reasons on which it is based;

(d) be accompanied by the payment of a fee for lodging the application.

(2) Without prejudice to the provisions of paragraph (3), upon receiving an application and the lodging fee, the Secretary-General shall forthwith:

(a) register the application;

(b) notify the parties of the registration; and

(c) transmit to the other party a copy of the application and of any accompanying documentation.

(3) The Secretary-General shall refuse to register an application for:

(a) revision, if, in accordance with Article 51(2) of the Convention, it is not made within 90 days after the discovery of the new fact and in any event within three years after the date on which the award was rendered (or any subsequent decision or correction);

(b) annulment, if, in accordance with Article 52(2) of the Convention, it is not made:

(i) within 120 days after the date on which the award was rendered (or any subsequent decision or correction) if the application is based on any of the following grounds:

- the Tribunal was not properly constituted;

- the Tribunal has manifestly exceeded its powers;

- there has been a serious departure from a fundamental rule of procedure;

- the award has failed to state the reasons on which it is based;

(ii) in the case of corruption on the part of a member of the Tribunal, within 120 days after discovery thereof, and in any event within three years after the date on which the award was rendered (or any subsequent decision or correction).

(4) If the Secretary-General refuses to register an application for revision, or annulment, he shall forthwith notify the requesting party of his refusal.

Rule 51
Interpretation of Revision:
Further Procedures

(1) Upon registration of an application for the interpretation or revision of an award, the Secretary-General shall forthwith:

(a) transmit to each member of the original

Tribunal a copy of the notice of registration, together with a copy of the application and any accompanying documentation; and

(c) request each member of the Tribunal to inform him within a specified time limit whether that member is willing to take part in the consideration of the application.

(2) If all members of the Tribunal express willingness to take part in the consideration of the application, the Secretary-General shall so notify the members of the Tribunal and the parties. Upon dispatch of these notices the Tribunal shall be deemed to be reconstituted.

(3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall so notify the parties and invite them to proceed, as soon as possible, to constitute a new Tribunal, including the same number of arbitrations, and appointed by the same method, as the original one.

Rule 52
Annulment: Further Procedures

(1) Upon registration of an application for the annulment of an award, the Secretary-General shall

forthwith request the Chairman of the administrative Council to appoint an ad hoc Committee in accordance with Article 52(3) of the Convention.

(2) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointment. Before or at the first session of the Committee, each member shall sign a declaration conforming to that set forth in Rule 6(2).

Rule 53
Rules of Procedure

The provisions of these Rules shall apply mutatis mutandis to any procedure relating to the interpretation, revision or annulment of an award and to the decision of the Tribunal or Committee.

Rules 54
Stay of Enforcement
Of the Award

(1) The party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which

the application relates. The Tribunal or Committee shall give priority to the consideration of such a request.

(2) If an application for the revision or annulment of an award contains a request for a stay of its enforcement, the Secretary-General shall, together with the notice of registration, inform both parties of the provisional stay of the award. As soon as the Tribunal or Committee is constituted it shall, if either party requests, rule within 30 days on whether such stay should be continued; unless it decided to continue the stay, it shall automatically be terminated.

(3) If a stay of enforcement has been granted pursuant to paragraph (1) or continued pursuant to paragraph (2), the Tribunal or Committee may at any time modify or terminate the stay at the request of either party. All stays shall automatically terminate on the date on which a final decision is rendered on the application, except that a Committee granting the partial annulment of an award may order the temporary stay of enforcement of the unannulled portion in order to give either party an opportunity to request any new Tribunal constituted pursuant to Article 52(6) of the Convention to grant a stay

pursuant to Rule 55(3).

(4) A request pursuant to paragraph (1), (2) (second sentence) or (3) shall specify the circumstances that require the stay or its modification or termination. A request shall only by granted after the Tribunal or Committee has given each party an opportunity of presenting its observations.

(5) The Secretary-General shall promptly notify both parties of the stay of enforcement of any award and of the modification or termination of such a stay, which shall become effective on the date on which he dispatches such notification.

Rule 55
Resubmission of Dispute
After an Annulment

(1) If a Committee annuls part or all of an award, either party may request the resubmission of the dispute to a new Tribunal. Such a request shall be addressed in writing to the Secretary-General and shall:

(a) identify the award to which it relates;

(b) indicate the date of the request;

(c) explain in detail what aspect of the dispute is

to be submitted to the Tribunal; and

(d) be accompanied by a fee for lodging the request.

(2) Upon receipt of the request and of the lodging fee, the Secretary-General shall forthwith:

(a) register it in the Arbitration Register;

(b) notify both parties of the registration;

(c) transmit to the other party a copy of the request and of any accompanying documentation; and

(d) invite the parties to proceed, as soon as possible, to constitute a new Tribunal, including the same number of arbitrators, and appointed by the same method, as the original one.

(3) If the original award ha only been annulled in part, the new Tribunal shall not reconsider any portion of the award not so annulled. It may, however, in accordance with the procedure set forth in Rule 54, stay or continue to stay the enforcement of the unannulled portion of the award until the date its own award is rendered.

(4) Except as otherwise provided in paragraphs (1)-(3), these Rules shall apply to a proceeding on a

resubmitted dispute in the same manner as if such dispute has been submitted pursuant to the Institution Rules.

Chapter VII
General Provisions

Rule 56
Final Provisions

(1) The texts of these Rules in each official language of the Centre shall be equally authentic.

(2) These Rules may be cited as the "Arbitration Rules" of the Centre.



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الدكتور
صلاح الدين جمال الدين
أستاذ مساعد القانون الدولي الخاص
رئيس قسم القانون الخاص
ومحام ومحكم لدى محكمة لندن للتحكيم الدولي

2007

الناشر
دار الفكر الجامعي
٢٠ ش سوتير الازاريطة. الاسكندرية
ت: ٤٨٤٣١٣٢

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